INQUIRY

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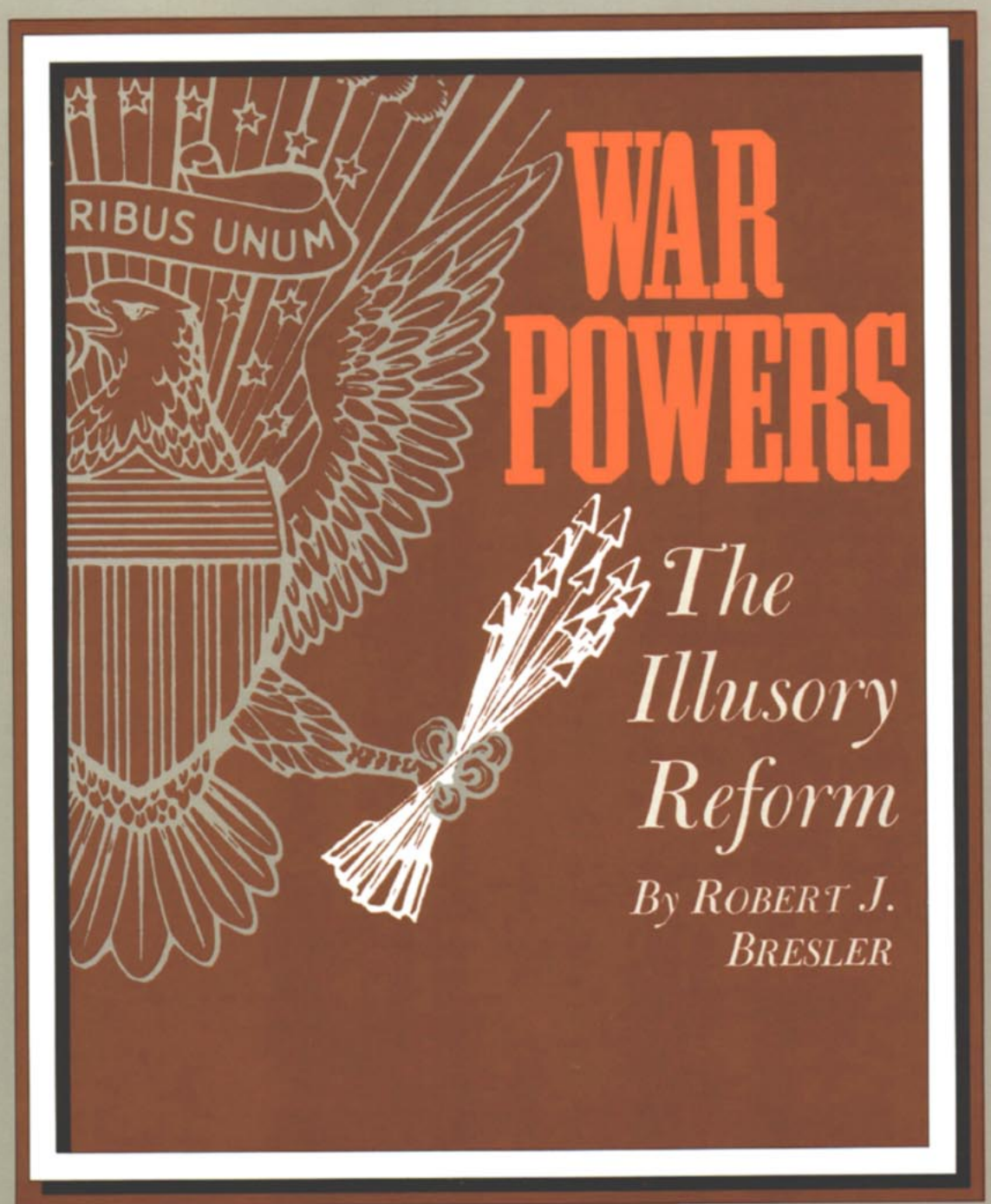
West Germany's War on Civil Liberties

Black or White—Who Owns Rhodesia?



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- **The Abuse of the Social Security Number:** The SSN is becoming an albatross around our necks, imprisoning all of us in our recorded pasts without any chance for a "fresh start."
- **The Private Security Industry:** Private police spy on customers in department store fitting rooms and bathrooms, watching for shoplifters. Thirty-one percent of them believe it is a crime if a customer calls them a pig.
- **Controlling Our Spies:** Radical surgery is needed to make the intelligence community work for democracy, not against it.
- **Psychological Testing of Students:** Fifth graders are being asked: If you were paralyzed in an auto accident, how much time would you spend blaming the driver, thinking about suicide, and trying to recuperate? Their answers are supposed to show if they possess "normal" beliefs and attitudes.
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AS PRESIDENT CARTER'S decision to airlift French and Belgian troops into Zaire last month reminds us, the War Powers Act of 1973 is a little more than a liberal illusion. The question remains: Who has the authority to commit U.S. troops overseas?

Who owns Rhodesia?
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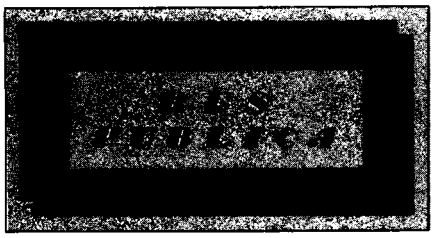

Certainly not

■ When Zbigniew Brzezinski, the White House national security adviser, visited the Great Wall of China during his three-day visit to Peking, he jested with his hosts that the last one to the top would oppose the Russians in Ethiopia. . . . [Later] Mr. Brzezinski played to his hosts' proclivities. "Neither of us dispatches international marauders who masquerade as nonaligned to advance big-power ambitions in Africa," he said in a toast in the Great Hall of the People. "Neither of us seeks to enforce the political obedience of our neighbors through military force."

■ President Carter told a group of senators today that because of Congressional restraints, the United States was unable to provide assistance to anti-Government rebel forces led by Jonas M. Savimbi that are operating in Angola. . . . Some members of the National Security Council staff and the Central Intelligence Agency have raised the possibility of assistance to Mr. Savimbi through the French with some senators.

—New York Times, May 24, 1978

To each according to his needs

■ William H. Webster, the Director of the Federal Bureau of Investigation, today urged Congress to pass legislation that would grant individual Federal agents immunity from civil suits. "Our agents in the field want this bill very much," he said.

—New York Times, May 11, 1978

The flowering of the People's Republic

■ As president of the All-China Union of Writers and vice president of the National Assn. of Writers . . ., [Mao Tun] will have considerable influence over the direction of China's literary renaissance, a resurgence that comes in the wake of the purge of political and cultural extremists.

"We hear people in some foreign countries talking about liberalization (in China)," Mao Tun said. "I think this is the wrong way to put it. . . . In other words, we have many, many people who are free to air their views, but if some people want to oppose socialism, to speak for our enemies, to spread bourgeois ideas—this means they are speaking for the enemy and there will be restrictions on them."

—Los Angeles Times, May 24, 1978

And we wouldn't want that

■ Sen. George McGovern (D.-S.D.), in a speech focusing primarily on the Saudi [F-15] sale, said that rejection "would be a shattering vote of no confidence in our President, our secretary of state, our secretary of defense and our Joint Chiefs of Staff . . . We should carefully weigh the consequences of publicly repudiating the judgment and reliability of our own leaders."

—Los Angeles Times, May 16, 1978

You've seen one, you've seen 'em all

■ Outraged artists, a city official [in Providence, R.I.], and even an anti-pornography crusader have condemned a police raid of a show of erotic photographs and drawings called "Private Parts." Police seized 43 photographs and drawings Tuesday from a gallery near the Rhode Island School of Design campus.

Harold Doran, a lobbyist in the [Rhode Island] General Assembly who pushed for the antipornography law the police used to conduct the raid, said he was disappointed with the action. "We never intended the law to be applied to school and libraries," he said.

—Washington Post, May 18, 1978

Colby, for instance, is masquerading as a reformer

■ Former CIA Director William Colby has confirmed what many CIA critics have charged for years—that the U.S. Agency for International Development (AID) has been widely used as a cover for CIA agents abroad.

Colby was asked during a Needham, Massachusetts, television interview whether AID had become a wing of the CIA. Said Colby: "It used to provide so-called cover for CIA officers." The former agency chief added: "CIA officers cannot do their work in foreign countries if they wear CIA on their forehead. They have to have some other reason for being there."

—Zodiac News Service, May 19, 1978

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The crisis in Africa

Testing our imperial will

WHAT ARE THE RUSSIANS AND Cubans up to in Africa? Does it matter to the United States? And if it matters, what should we do about it?

So far, Jimmy Carter and Zbigniew Brzezinski have not bothered to try to give the American people answers to these questions. That's a bad sign. It means that our leaders in Washington are again in the grip of a Cold War outlook that attributes each Third World upheaval and each Russian move to Soviet malevolence, mandating an American response to every episode. Brzezinski has given this outlook his own special, frankly imperialist twist. In a recent interview with Elizabeth Drew of the *New Yorker*, he stressed that the imperial rivalry between the United States and the Soviet Union would shape and color the multitude of other political conflicts in the world. "In the end, it gets down to a simple proposition," he said. "They would like to become number one, like we did. It's better to become number one from the number-two position than to be toppled from number one. That's why there is such a serious problem. It's much more destabilizing for our self-esteem, for our role in the world; there's no way of knowing where you will stop once you start going downhill."

There's no denying that the Soviets have ambitions in Africa. But it would be a mistake not to see—as Brzezinski refuses to—the ideological framework in which those ambitions are cast, and not to remember—as Brzezinski doesn't—that recent Soviet activity in Africa has been largely a *response* to Western actions. However self-serving Soviet ideology may be, the Russians (and the Cubans) are not far wrong when they point out that they came to Angola and Ethiopia to save "the revolution." The major Communist support for Angola's ruling MPLA did not begin until after the Americans, on one hand, and the South Africans, on the other, intervened in the civil war there. And the Soviets did not become the major backers of the military regime in Ethiopia until after Washington ended its military aid and signaled its support for neighboring Somalia, which promptly launched a border war in the Ogaden. These moves have served to expand Soviet influence, but they have been taken at the behest of Africans, in response to American actions. They do not seem to be part of a master plan, such as some hawks imagine, for Soviet world domination. And there is no reason to believe, if we remember events in Somalia, Sudan, Egypt, and Ghana, that the Soviet presence will outlive its usefulness to African leaders.

The recent developments in Africa do not seem to us to require any American response. Real national security can be achieved only by the defense of American liberty; a mad scramble to remain "number one" can only damage our prosperity and ideals. Concrete American interests in Africa are minimal. Even if anti-American regimes come to power, they will continue to sell us their raw materials and products, just as the Angolans now allow Gulf Oil to pump petroleum for the West. Nor do Americans have much to teach the Africans about race relations. We shouldn't be surprised that the Africans don't have much confidence in our benevolence. And we should be wary, given all we have recently learned about ourselves and our government, of helping other people with their problems, even if those problems involve the Russians. ❏

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THOMAS SZASZ

The rapist as patient

THE MOST STRIKING THING about the past century of medical history is the paradox that as our diagnostic and therapeutic technology has taken giant steps forward, our common understanding and legal articulation of what constitutes disease and treatment have taken giant steps backward. That is why the optimist sees modern medicine as a glass half-full of achievements: he emphasizes, correctly, that we can now detect and treat diseases better than we ever could before in human history. It is also why the pessimist sees modern medicine as a glass half-empty of common sense: he emphasizes, correctly, that we are now more confused about demarcating the categories of illness and treatment than we were centuries ago.

Both the medical optimist and the medical pessimist are right, because each looks at a different aspect of medicine: the optimist at its technology, the pessimist at its philosophy. Having to choose between these is a Hobson's choice. For what good is diagnostic and therapeutic technology if we lack understanding of what needs, and constitutes, "fixing"? And what good is a clear and coherent understanding of disease if we lack the means to treat it?

The two fundamental aspects of medicine are thus at odds with each other. As a healing art, medicine ought to serve human ends by humane means. As a biomedical technology, medicine has presented physicians with a temptation they have not been able to resist—that of serving themselves by defining as desirable that which is merely dramatic or difficult. When the fake diagnoses of psychopathology and the fake treatments of psychotherapy are added to the picture, the result is an invasion of common sense by a plethora of new "medical" illnesses and interventions, as the following vignettes illustrate.

On January 14, 1978, a federal judge in Detroit ordered the Aetna Insurance Company to pay $12,000 to a convicted rapist. Why? Because the rapist, Paul D. Duffy, 36, was "confined for more than five years for medical treatment as a sexual psychopath." The facts are briefly as follows.

In December 1966, Duffy confessed to a charge of rape and was ordered confined at the Ionia State Hospital in Michigan by a Macomb County Circuit Court. Michigan then had a criminal sexual psychopath law which empowered courts to commit "mentally ill sex offenders" to state institutions for treatment rather than to prison for punishment. (That act was repealed in 1968.) In 1972, Duffy was released, another proof of the miraculous healing powers of modern psychiatry. He returned to his job at a Chrysler assembly plant, only to be arrested again, on another rape charge, in 1974. A Wayne County Circuit Court then sentenced him to a term of 35 to 50 years at Jackson Prison. Duffy's suit against the Aetna Insurance Company, with which he had a health policy, was based on the claim that his first confinement was due to his "illness." Attorneys for the insurance company argued that it was due to his "crime." According to U.S. District Judge James P. Churchill, who decided the case, the issue was: "Was he [Duffy] disabled? . . . Forget that what he did was repulsive and sexual and that he's serving nearly a life sentence." Duffy, the judge said, was considered sick and "his illness required him to be confined. The law merely recognized that."

Rape is a form of violence—one person, the rapist, violating another person, the victim. Two things follow from this: first, that rape is a criminal act; second, that it is—must be, by definition—desired by the rapist. We deny these facts at great peril to our moral and political integrity.

Adultery is not a form of violence. Although the act betokens a violation of the moral contract between the adulterous person and his or her marital partner, the sexual act itself is consensual. Two things follow from this: first, that the act is not a crime (or, if it is, the statutes prohibiting it are dead-letter laws); second, that the act is—must be,

BILL YENNE

THOMAS SZASZ, *a contributing editor, writes a monthly column for* INQUIRY. *His most recent book is* The Myth of Psychotherapy.

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by definition—desired by the adulterer. Hence, if adultery, too, were an illness, then adulterers (if "disabled" by their sexual activities) should, like rapists, be eligible for "medical disability" compensation. But who says adultery is an illness? Psychiatrists do!

ON DECEMBER 18, 1977, IN A newspaper story headlined "Adultery linked to 'success depression,' " Arthur J. Snider, *Chicago Daily News* science editor, reported on this fresh psychiatric discovery. The discoverer of adultery as a disease was identified as Dr. Morton L. Kurland, a Palm Springs, California psychiatrist, among whose clients are "a large number of middle-aged women who are upset over their husbands' sudden adulterous behavior." Don't get Dr. Kurland or Mr. Snider wrong: the women who are "upset" are not sick; their husbands who are "adulterous" are. How does Dr. Kurland know this? By asserting that the men in question have not *chosen* to be unfaithful to their wives, but have been *caused* to act thusly: "In almost all cases, the cause is depression," says Dr. Kurland. "But rather than look upon their problem as a depression, the men project it onto their sexual life and their marriages. The extramarital love affair is an attempt at self-cure." Dr. Kurland does not say whether the costs of such love affairs should be deductible medical expenses. More on that shortly.

Because many of the men seen by Dr. Kurland, and another psychiatrist Snider quotes, are very successful, the experts have decided that these men "had unfulfilled and frustrated needs of dependence as children," which "caused" their depression in middle age, which in turned "caused" their "promiscuity." Dr. Maurice J. Martin of the Mayo Clinic calls such "success depression" the "meal ticket syndrome"—illustrating, I suppose, the first rule of psychodynamics: "When in doubt, give it a name." Snider reports that in Dr. Martin's view, "Middle-aged promiscuity due to depression may severely tax the strength of the marriage. The wife must be understanding and tolerant of the symptoms. This requires recognition and treatment of the problem." Since the "disease" of "success depression" and its characteristic symptom "adultery" are extremely common, I assume that Drs. Kurland and Martin will be appropriately rewarded for their important medical discovery.

Although psychiatrists are among the leading contenders in the race to confuse the categories of disease and treatment, they are by no means the only serious competitors. Other physicians, lawyers, legislators, and judges are also doing their best.

In the January 1978 issue of the *Physician's Financial Letter*, one item was the answer to this question: "Is face lifting a deductible medical expense?" Here is the answer, almost in its entirety: "Does the fact that personal rather than medical considerations motivate a face lifting operation bar a medical expense deduction for its costs? The Internal Revenue Service rules it does not. A woman paid fees for plastic surgery that improved her personal appearance. . . . The operation was not recommended by a physician. The IRS says the deduction is allowed because the operation affected a structure of the human body, and the law specifically allows for fees paid for the purpose of affecting any structure or function of the body."

As I wrote some time ago, if a man cuts off his own penis, he is schizophrenic; but if he can get a urologist to cut if off, he is a transsexual. Furthermore, as the next two examples illustrate, amputation of the healthy penis is not only a "treatment" for which the state must pay, but, if successful, it also produces a compensable "disability."

ON APRIL 21, 1978, THE SAN Francisco Chronicle reported the California State Court of Appeals' decision that the state "must pay for sex change operations for two welfare recipients." Declared the court: "We do not believe, by the wildest stretch of the imagination, that such surgery can reasonably and logically be characterized as cosmetic"—an opinion that surely says more about the judges' lack of imagination than about transsexual therapy. Both cases involved persons who were born male. One of the "patients," identified as "G.B.," was described as "an adult male transsexual who had not been helped by psychotherapy and needs radical surgery for sex conversion."

The following case illustrates the outcome of a medically, psychiatrically, and surgically successful "treatment" for "transsexualism."

In March 1971, Paul Monroe Grossman, a music teacher in the Bernards Township (N.J.) school system, underwent a sex-change operation. Five months later, with his name changed to Paula Miriam Grossman, he/she was fired from his/her job. On February 17, 1978, the Appellate Division of the New Jersey State Superior Court ruled that Grossman was entitled to a disability pension. The 3–0 decision held that "the transsexual, Paula M. Grossman, was obviously incapacitated within the eligibility definitions of the state pension laws, and therefore deserved the monthly pension from the statewide Teachers' Pension and Annuity Fund." The court did not dispute Grossman's claim that "she was mentally and physically fit to perform her duties." Instead, the court noted that "no school district will employ her because of her transsexual status." "I'm delighted that I won," Grossman told the *New York Times*. "It's a victory in the sense that if the state decides to disable anybody for any reason, then they're going to have to pay for it."

The Erewhonian and Orwellian dimensions of disease and disability are here nicely developed. Was Grossman sick before the transsexual operation? Is he/she sick now? If so, what is the origin of his/her illness—the transsexual "treatment" or the dismissal from employment?

Enough. Rape is now an illness. Adultery is now the symptom of an illness. Amputating a man's genitals and giving him hormones to help him impersonate a woman is now a treatment. Although medically successful, transsexual therapy may nevertheless lead to a "disability" that is now compensable.

At the same time, some of the interventions that were treatments a century ago are now crimes. In 1878, selling an alcoholic tincture of opium was the paradigm of free enterprise in chemotherapy, and ingesting it the paradigm of medical treatment. In 1978, selling heroin is a crime often punished more severely than first degree murder; ingesting it is a disease considered more important and more serious than diphtheria, polio, or even syphilis.

Had we lived in 1878, each day would have brought us fresh examples of the tragedy of the impotence of medicine: children dying of diphtheria, adults of diabetes. Now, each day brings us fresh examples of the tragedy of the imbecility of medicine: rape and adultery classified as diseases, "genital reconstruction" and cosmetic surgery classified as treatments. Then, the tragic loss was the death of individuals; today, it is the "death" of language and the undermining of the economic and legal fabric of the whole society.

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SCIENCE

DAVID RITCHIE

Taking the plunge with OTEC

THE SUN SHINES BRIGHTLY on solar energy research under the Carter administration, and this year the Department of Energy (DOE) plans to pour some $175 million into projects for changing sunlight into electricity. Yet one-fifth of the federal money for work on solar energy is going for a risky scheme which has been called "the biggest gamble in solar power." This project has already consumed more than $12 million without generating much more than a few reports, and faces a bleak commercial future. And to make matters still more puzzling, the government is all but ignoring the engineers who have the longest experience with this project.

The project, called Ocean Thermal Energy Conversion (OTEC), would use a giant heat engine to draw power from an unlikely source: the ocean depths. In principle, OTEC plants would work like a refrigerator in reverse. Instead of using electricity to change temperature, OTEC would use the temperature gradient between deep, cold waters and the sun-warmed ocean surface to make electricity.

There are many different designs for OTEC plants, but they all work in basically the same way. The plant floats on or near the surface and has a cold-water intake pipe reaching a thousand feet or more into the depths. Inside the plant are tubes filled with a "working fluid" with a low boiling point, such as ammonia. Cold water drawn up through the pipe keeps the ammonia in liquid form until the ammonia is pumped through warm surface water and evaporates. Then the ammonia vapor is run through a gas turbine hooked up to a generator, making electricity. After passing through the turbine, the ammonia vapor is converted back to liquid, and the cycle starts over. The electric current from the generator flows through a submerged cable to utilities on shore.

If OTEC plants worked, they would be an environmentalist's dream. They would consume no fuel; hence they would neither create pollution nor deplete the world's fossil fuel reserves. Also, because the thermal gradient in the sea is relatively constant, OTEC plants could operate at night or in cloudy weather, when ordinary solar collectors have to shut down. So OTEC, its supporters claim, could give utilities an excellent source of base-load power. And the amount of energy to be taken from the sea is tremendous: Professor William Heronemus of the University of Massachusetts thinks a 15- by 450-mile corridor of the Gulf Stream might deliver twice as much electricity as the United States uses every year.

DAVID RITCHIE, an aerospace engineer in Cambridge, Massachusetts, writes frequently on science topics for newspapers and magazines.

Scientists are taking a closer look at claims made for OTEC and finding those claims may have been grossly exaggerated.

IN THEORY, OTEC CLEARLY has some big advantages over land-based solar collectors and other alternative energy sources. Among the first engineers to see those advantages was J. Hilbert Anderson of Sea Power Systems, Inc. in York, Pennsylvania. For the last 15 years, Anderson and his son James, an MIT graduate, have been promoting OTEC at engineers' conventions and in journals such as *Power* and *Mechanical Engineering*. The Andersons' plugs for OTEC helped interest the federal government in the idea, and in 1971 the Energy Research and Development Administration (ERDA) set aside $84,100 for OTEC research. That tiny sum has grown to some $35 million for fiscal 1978, and the government has commissioned Lockheed, TRW, the University of Massachusetts, and the Applied Physics Laboratory at Johns Hopkins to design OTEC plants.

The dimensions of the proposed plants are staggering. Lockheed's "spar buoy" plant would be 150 stories tall (counting the cold-water intake pipe) and put out 160 megawatts (MW) of electricity, enough for a city of 75,000 persons. Not to be outdone, TRW proposes a colossal doughnut-shaped plant with an intake pipe almost a mile long, while Johns Hopkins and the University of Massachusetts envision self-propelled "plant-ships" the size of small college campuses.

The Andersons have also designed an OTEC plant and think they can put their horseshoe-shaped unit in the water within five years—well ahead of DOE's timetable—if they can get $150 million or so for a prototype. Their 100-MW plant would weigh only a fraction as much as the Lockheed and TRW designs and, James Anderson claims, cost less to build: only $500 to $800 per kilowatt, compared to $1500 to $2500 for other OTEC designs.

Since no one has worked with OTEC longer than the Andersons, they, if anybody, would seem best qualified to develop an OTEC plant. The government, however, has been stingy with the Andersons. So far, DOE has given them only some $213,000 for such minor jobs as studying a special design for the cold-water intake pipe. That sum is small change compared to the $3.5 million the government recently gave TRW to test a one-MW heat exchanger for OTEC.

Why is Washington lavishing money on universities and large corporations for OTEC research, when it was the Andersons who did the pioneering work on ocean thermal power? According to *New Engineer* magazine, in a recent article on the Andersons, the government prefers to stick with universities and big companies with which it has long worked. These organizations have well-established reputations and good political connections, and even though

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they have botched projects in the past—the Lockheed C5-A is the most obvious example—a federal agency runs little risk in letting out fat contracts to these giants. On the other hand, the government is wary of handing out large grants to small family firms; if such a firm failed, the contracting agency would be left in a badly exposed political position. The Department of Energy has told the Andersons that their support for OTEC would bias them, and that the agency preferred to give most of the research money to "unbiased and impartial" contractors. But there seems little reason to believe that Lockheed and TRW will be any less enthusiastic about OTEC as long as there is federal money available for the project.

INDEED, IT ALREADY APPEARS that enthusiasm for the ocean thermal concept has carried government spending beyond realistic levels. Now that the novelty of ocean thermal energy is wearing off, scientists are taking a closer look at the claims made for OTEC and finding those claims may have been grossly exaggerated.

To begin with, nothing the size of an OTEC plant has ever gone to sea before. Can our technology handle the job of floating something the size of the Empire State Building? Not all engineers are sure. Last year, *Science News* questioned whether the huge intake pipes on OTEC units can withstand the forces produced by ocean currents and even water intake itself. Neither do we know whether such giant structures can be moored securely to the ocean floor, nor what problems may arise with the submarine cables running between the OTEC plants and installations on shore.

However, even if OTEC plants can be built, floated, and anchored, they will be horribly inefficient. An OTEC unit running under the best possible conditions would be only five or six percent efficient, and the plants are expected to be only two or three percent efficient in practice. By contrast, coal-fired generators are at least ten times more efficient at 30 to 35 percent, and even a windmill—five to nine percent—does better than OTEC.

Also, the plant's efficiency could drop to zero if something should foul the all-important heat exchangers, as will almost certainly happen in the sea. A thin coat of marine slime could cut heat transfer by half, and no one knows how to keep that slime from forming or how to remove it cheaply. Then there is that bane of marine engineers, the barnacle, to consider. Barnacles are a hundred times harder to remove than slime and will have a chance to settle and start growing anytime the plant shuts down for repairs. The cost of scraping barnacles off the heat exchangers is anyone's guess.

Nor are slime and barnacles the only problems engineers face with the heat exchangers. Corrosion is just as big a headache, because metals that hold up fine on land get eaten away quickly in the sea. Aluminum heat exchangers, the National Academy of Sciences (NAS) pointed out recently in a critical study of OTEC, would be cheap, but would corrode swiftly in ocean water. Copper might hold up better, but would poison marine organisms. Titanium would resist corrosion, but a couple of OTEC plants might use up the nation's titanium production for a year.

Most important, no one wants to buy OTEC plants, even if they are developed. Utilities in Florida, the best site for OTEC operations in the United States, turned thumbs down on OTEC as a "really high risk," and their rejection makes it unlikely that utilities anywhere else in the country will warm to ocean thermal power, at least until OTEC can compete economically with fossil-fuel generators.

Forthcoming in

INQUIRY

- *David Wise on "national security" break-ins*
- *Alan W. Scheflin and Edward M. Opton, Jr., on the CIA's search for the Manchurian Candidate*
- *Barton J. Bernstein on SALT II*
- *Reviews by Anthony Burgess, Maurice Cranston, and Henry Nash Smith*

*DESPITE OTEC'S DRAW*backs, NAS scientists still consider it a long-term option, like fusion power. The NAS study, however, indicates OTEC will not go far in the near future. The technical obstacles (not to mention the economic ones) are too great to be overcome soon, if they can be overcome at all. Yet the government is plunging ahead with OTEC research and development. DOE officials insist they have addressed all the problems which stand between OTEC and success, and the government is expected to award a contract for a five-MW pilot plant this year, with the first commercial prototype slated for launch in 1986.

But at its current rate of growth and achievement, OTEC research could consume half a billion dollars in taxpayers' money over the next few years without producing more than a trickle of power—without benefiting anyone, in short, but the contractors. It appears that the government has leaped into deep water with OTEC without bothering to consider the chilly realities of sea thermal power. Is OTEC worth that expense when the risks are so great, the potential yield so small, and the commercial future so dark?

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Who owns RHODESIA?

by Robin Palmer

*IN 1965 THE HITHERTO OB*scure British colony of (Southern) Rhodesia, in south-central Africa, leapt into international prominence when its white minority government threw off the vestigial remains of British control by its Unilateral Declaration of Independence. Though the settler leader Ian Smith and his colleagues borrowed some of the rhetoric of the American Declaration of Independence, the UDI was carried out primarily to ensure that a white minority of a quarter of a million could continue to dominate a black population of some 5 million.

On March 3 of this year, it appeared that white domination had finally come to an end. Harassed by a guerrilla war which has escalated since neighboring Mozambique achieved independence in 1975, by the soaring costs of fighting that war, and by the cumulative effects of international sanctions against Rhodesia, the Smith regime entered into a deal that supposedly shares power with black leaders. As a result of this deal, Rhodesia will become the independent, black-ruled state of Zimbabwe on December 31, 1978.

But Smith has cleverly elected not to share power with those who have forced him to come to the conference table (the Patriotic Front), but with other black leaders—Bishop Muzorewa, Ndabaningi Sithole, and Chief Chirau—who aspire to inherit the fruits of power, although they have done little of the real fighting. The scene is now set for what would inevitably be a great tragedy—a civil war between the Patriotic Front and the internal-settlement leaders.

The debate over black majority rule obscures the key issue: whether blacks will win back their stolen lands.

Such a war is now a very real possibility since there is a fundamental difference of approach and of ultimate objectives between the two sides. While the internal leaders seem happy to inherit the colonial state intact and tap its resources for their own benefit, the Patriotic Front wants to defeat that state militarily and replace it with a more radical regime from top to bottom. Recent Anglo-American initiatives, which seem to give some support to the Patriotic Front leaders, are in fact aimed at undermining them and turning them into subservient tools of Western interests.

The key question of land policy, formerly an instrument of white oppression and something that could be relied upon to unite all African leaders, now serves to illustrate the widening gulf that separates the rival factions.

Under the terms of the March internal settlement, all property rights (in effect virtually confined to whites) are to be protected, any taking of property will require prompt and adequate compensation, and there is to be no nationalization of land. This mirrors earlier U.S.–British proposals for a "Zimbabwe Development Fund," which would compensate departing whites who were unwilling to live under a black government. The implications of such strategies, when combined with the March 1977 amendment to the Land Tenure Act, are twofold. First, wealthy blacks—or blacks with access to state funds—will be able to acquire formerly white-owned estates, and second, as the June 16, 1977 issue of the *Rhodesia Herald* put it, there will be no "massive and hysterical land grab by Africans," since this would be "disastrous for all concerned." The internal leaders, like the Kenyan ruling elite before them, appear quite happy with this deal; and some individuals, who once wrote or spoke indignantly about the iniquities of land grabbing by the white settlers, have themselves already begun to acquire large estates.

The Patriotic Front, on the other hand, has a more radical agrarian program. All the specifics have not been spelled out, and there are some differences among the groups that make up the Patriotic Front. Leaders like Robert Mugabe and Henry Matuku Hamadzaripi argue that if one is to talk of compensation, one should begin with

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the black farm laborers. What is urgently required, they say, is a redistribution of land to the millions who have been dispossessed in the past and the establishment of rural cooperatives. White farmers, well served by the state in the past, should not be compensated but offered jobs as farm managers in the new cooperatives. Other Patriotic Front leaders, like Josiah Chinamano, stress confiscation of the estates of white emigrés and call for moving the Tribal Trust Lands in the direction of individual land-tenure.

The origins of the controversy over land in Rhodesia date back to the mineral revolution of the late nineteenth century—diamonds at Kimberley in the 1870s and gold at Johannesburg in the 1880s—which totally transformed the economy of southern Africa and created huge demands for cheap labor over an ever-expanding area. It also led millionaire British imperialist Cecil Rhodes to form his British South Africa Company for the colonization and mineral exploitation of the territories that subsequently bore his name—Southern and Northern Rhodesia. Rhodes hoped to discover in Southern Rhodesia a "second Rand" to equal the rich gold fields in the Witwatersrand of Johannesburg. Such a discovery would line his own pockets still further and help to reassert British economic supremacy in southern Africa, which was threatened by the potential power accruing to the Afrikaner republic of the Transvaal from the enormous gold deposits of the Rand.

Some individuals, who once spoke indignantly about the inequities of land grabbing by the white settlers, have themselves already begun to acquire large estates intact.

Thus in 1890 Rhodes's "Pioneer Column" occupied Mashonaland, in the eastern part of Rhodesia. On finding disappointingly little gold, the new settlers invaded Matabeleland in the west, overthrew the powerful Ndebele state of Lobengula, and became masters of the whole country. Such was the initial brutality of the BSA Company's rule that both the Shona and the Ndebele people rose up in armed revolt in 1896–1897 *(ChiMurenga)* but the risings were put down, often with great savagery, and with sufficient force to deter effective black resistance for the next 70 years.

IN SOUTHERN AFRICA, IT had long been a tradition for white settlers to expropriate the lands of blacks whom they had defeated in war. The victorious whites generally laid claim to land for farms whose average size was over 6000 acres. It was therefore not surprising that both the white pioneers who entered Rhodesia in 1890 and those who fought the Ndebele in 1893 were promised land and mining rights. The mining rights (to dig for gold) were the more highly prized, and some pioneers sold their land rights to the many speculative companies that abounded at the time. A considerable amount of land was expropriated during the general fortune-hunting of the 1890s, and this was later to have very far-reaching effects. In all, about one-sixth of the entire country (16 million out of 96 million acres) was acquired by whites in the first decade of colonial rule. Quality was even more significant than quantity, since much of this land was situated on the cool, well-watered fertile *highveld* in the middle of the country, through which the main modern lines of communication were being constructed. By 1900, many Shona people and virtually all of the Ndebele found that their land had been expropriated, though as yet very few whites effectively occupied the land they had seized.

After the overthrow of the Ndebele in 1893, the whites took their land by "right" of conquest. Previously, they had relied upon the 1891 Lippert Concession, which was extracted from Lobengula under false pretenses—Lippert's agent claimed to be a rival of Rhodes when in fact he was in collusion with him. It also conveniently assumed that Lobengula held sway over the whole country, something both Lobengula and the BSA Company knew to be false. Lippert duly sold his concession to Rhodes for 50,000 one-pound shares, £5000 in cash, and 80,000 acres of land, half of it in the as yet unconquered Matabeleland.

After the Rhodesian settlers had helped themselves so liberally to land, the British government, which then, as now, bore ultimate responsibility for the territory, belatedly suggested that some land be set aside for blacks. Following the defeat of the Ndebele in 1893, a land commission was set up which duly assigned two "native reserves" in remote, waterless, uninhabited, and tsetse-ridden country. The company's own administrator later admitted that the Ndebele regarded these "reserves" as "cemeteries not homes," and the British Colonial Office acknowledged that "the proceedings of the Land Commission were a farce." After the risings of 1896–1897, the company was instructed to do rather better. Its local officials, known as "native commissioners," were told to select "reserves" throughout the country for the people, which should be "sufficient and suitable for their agricultural and pastoral requirements, including in all cases a fair and equitable proportion of springs or permanent water." But they were also told that they could not select any of the 16 million acres already alienated to whites, or any land near existing or projected railways, or land on the so-called "Gold Belt." Consequently, as they freely admitted at the time, they were obliged to scrape the barrel.

The "native commissioners" assigned some 20 million acres of communally owned "reserves" in all, amounting to 37 percent of the total area of Mashonaland but only 17 percent of Matabeleland. They were mostly situated in the lower-lying *middleveld* surrounding the "White Highlands" (the term is normally applied to Kenya, but is equally accurate for Rhodesia) and in time, as we shall see, came to serve the function of labor reservoirs. Selection of the "reserves" was also bound up with the suppression of the risings, sometimes with interesting results. In one district the people had been driven from their homes along a main road into neighboring hills. The "native commissioner" mistook a temporary refuge for traditional homes and duly assigned "reserves" up in the hills. This hurried and haphazard division of the country into white and black areas in the 1890s, though it remained a paper partition for a while, subsequently became firmly entrenched and remains fundamentally unaltered to the present day.

In Rhodesia, the coming of the whites had created new regular markets for foodstuffs in the small towns and numerous small mining communities scattered about the country. Black peasants began selling to these markets

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from the very beginnings of colonial rule, as they had earlier done on a much smaller scale to missionaries and traders. Peasant production became not only a lucrative business, but also an effective means of paying the newly imposed taxes and thus avoiding wage labor in the mines, where conditions were deplorable, wages low, and the death rate high. By 1903 peasants were earning some £350,000 through the sale of grain and cattle, representing 70 percent of all black cash earnings. Very few had to or wanted to work for wages, and the mines thus relied heavily upon migrant workers recruited, often forcibly, from neighboring territories. Peasant prosperity was made possible by the fact that at this time the people were still living in their old homes on the *highveld* (on land alienated to, but not yet taken up by, whites), within easy access of the main markets and the new railway lines. The population was small, probably under one million, and thus there was no pressure on the land. Nor, as yet, was there competition from white farmers, who lacked capital, expertise, and labor, and who tended in practice to be either subsistence cultivators, or traders who found it cheaper to buy food from black peasants than grow it themselves. After 1908, however, things began to change.

In 1907 a party of BSA Company directors toured the country, decided the time had come to acknowledge that a "second Rand" was not going to materialize in Rhodesia (though one did appear later, in the Copperbelt of Northern Rhodesia, now Zambia), and agreed to promote an active policy of encouraging white settlement on the land. They hoped thereby to diversify the economy, cut the import bill, raise the value of land, and provide more traffic for the railways. At that time the company owned both the unsold land and the railways.

The new "white agricultural policy," as it was called, had a variety of features. Potential immigrants were actively sought in Britain and South Africa; extension services were revolutionized, with the company itself developing an active interest in agriculture for the first time; land prices were initially lowered; a new Estates Department sought to extract any good pieces of land which happened, by accident, to lie within the boundaries of the "reserves"; and, most important, a government-funded land bank was set up in 1912 to make loans available to "persons of European descent only." The bank was of crucial importance in helping new white farmers establish themselves on the land and in keeping them there in years of depression; such facilities were not available to individual black farmers until 1945, when they no longer posed a serious threat. The company's new policy had immediate effects: between 1908 and 1914, over 5.5 million acres of land were transferred to new immigrants, the number of white farmers more than doubled, and nascent maize, tobacco, and cattle ranching industries were established. Inevitably, competition between black and white farmers for land, labor, and markets intensified.

Before this rapid expansion of settler farming, white landowners had little reason to turn blacks off "their" land, since they could extract from them crops, rents, or labor, as desired, and because black farmers were playing such a vital role in food production. But by 1914 the situation had begun to change. Settler agriculture was labor- rather than capital-intensive, and white farmers could not afford to match even the low wages offered on the equally labor-intensive mines. What they needed was a large supply of seasonal labor—at precisely the time local blacks needed to tend to their own crops. They found themselves, like white farmers elsewhere in Africa, heavily reliant on migrant labor from depressed areas; and the whites, therefore, demanded from the government a further reduction in the amount of black-owned land, plus taxes and other mechanisms which would effectively compel as many local blacks as possible to work on their farms. So began a long squeezing-out process.

THE PROCESS BEGAN with the imposition from 1909 of high quitrents, dipping and grazing fees and even a dog tax, and the gradual eviction of blacks together with their cattle. In 1913 some unscrupulous whites refused to allow blacks who had been turned off neighboring farms to move cattle across their land, so the blacks were forced to sell their herds for whatever they were offered. Many white farmers were later to grow fat on the proceeds of heavily fining black cattle-owners for the "trespassing" of their beasts. In 1914–1915 a commission investigating the adequacy of the "reserves" decided to reduce them by a million acres; a great deal of good, well-watered and well-situated farmland was taken from the "reserves" and transferred to whites, while much inferior land was substituted, including one area which has been described as "practically a conglomeration of *kopjes* (rocks) with small cultivable valleys in between, infested with baboons and only traversable by pack animals." In the period of 1915–1925 a further 8.5 million acres of land were transferred to whites, while some 60,000 blacks were moved into the "reserves," where their ability to compete as peasant producers was much diminished.

In southern Africa, it had long been a tradition for settlers to expropriate lands of blacks whom they had defeated. The whites took the land by "right" of conquest.

In the wake of such movements, and with natural population increase, the "reserves" grew steadily more overcrowded and the land itself deteriorated, forcing people out to work as wage-laborers in the cash economy—something they had strongly resisted earlier.

In 1923 the British South Africa Company's administration of Southern Rhodesia came to an end, and power devolved upon the country's 36,000 whites, who preferred self-government to joining the Union (now Republic) of South Africa. Henceforth the settlers were strategically placed to oppress the blacks at will and to pump much more money into the white agricultural sector. One of the new government's first acts was to set up a land commission, whose recommendations resulted in the 1930 Land Apportionment Act. This prevented blacks from buying freehold land within the "white" area and thus being able to compete on equal terms. Individual purchase—in any event confined to the wealthy few—was thereafter restricted to the new "native purchase areas" (NPA). It should come as no surprise that the 7.5 million acres chosen for this purpose were assigned right next to the "reserves," and thus

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shared the same disadvantages of poor soils, tsetse infestation, lack of water, and remoteness from markets. By 1943 government officials admitted, privately, that over half of the NPAs were quite unsuitable for dividing up into smallholdings. The Land Apportionment Act also took the opportunity to increase the "white" area from 31 million to 49 million acres (over half the country), with a further 18 million acres of mostly tsetse country being left unassigned. The whites did not need anything like this amount of land, for much of what they already possessed lay undeveloped and idle. But they did wish to deny the land to the blacks, thereby intensifying the pressures on the "white" land and in the "reserves," and thus increasing the flow of black migrant labor to the farms, the mines, and the towns. In the towns, blacks, as a matter of social control and labor discipline, were harried by pass laws, forced to live as single men, and denied the opportunity of leading a normal family life.

The 1930 land law prevented blacks from buying land within the "white" area and thus competing on equal terms. Sales were restricted to "native purchase areas."

By 1932 the proportion of black cash earnings derived from the sale of agricultural produce, which had stood at 70 percent in 1903, had slumped to below 20 percent. In the 1930s a further 50,000 blacks were shunted into the "reserves," while white farmers, severely hit by the Great Depression, pressured the government into passing legislation to protect them from the last vestiges of black competition. Maize control acts were passed and tobacco and dairy control boards set up, all discriminating in price and marketing facilities against black producers, while the training of black agricultural demonstrators (a scheme borrowed from the southern states of America) was deliberately slowed down. Blacks complained, "Why does the government do everything to help the white farmer and nothing to help us?"

DURING AND AFTER World War II, Rhodesia underwent a dramatic process of industrialization, urbanization, and agricultural growth, which attracted considerable white immigration: the settler population rose from 80,000 in 1945 to 220,000 in 1960, with the number of white farmers almost doubling, to reach 8600 by 1960. To make way for these new arrivals, some 100,000 indigenous blacks were moved, often forcibly, into the "reserves." Postwar agriculture was transformed by the revolution in manufactured fertilizers, herbicides, and pesticides; in new crop strains; and in efficient motorized machinery. Whereas previously white and black farmers had been using similar technology, with white supremacy being ensured primarily through legal and political mechanisms, after 1945 large-scale, capital-intensive agriculture transformed the face of rural Africa, and the gap between rich and poor farmer widened dramatically. In Rhodesia the Virginia tobacco industry boomed, with sales soaring from £4 million in 1945 to £30 million in 1960, as war-ravaged Britain, short of dollars, could no longer buy American tobacco and so was forced to turn to her colonies.

Gradually, the increasing white prosperity in the towns and on the farms reduced the old fear of competition, and attempts were made, during the period of the Central African Federation (1953–1963), to create a stable, conservative black middle class, which would act as a buffer against the "winds of change" beginning to blow from below. The 1951 Land Husbandry Act endeavored to divide the communal "reserves" up into individual smallholdings. Possession of these holdings would, it was hoped, inculcate the capitalist ethic and provide an incentive to maximize production. But with the black population rising from 2 to 3 million in the 1950s, there was now insufficient land to go around. Migrant workers away in the towns returned home to find themselves landless and, with the country on the brink of rural revolt by 1960, the act was quietly abandoned. The government also contemplated scrapping the 1930 Land Apportionment Act in order to allow wealthy blacks to buy land in the "white" areas and so, the government hoped, defuse the growing black nationalism. But in 1962 the white electorate, alarmed at nationalist successes elsewhere in Africa, threw out the ruling party and voted in the Rhodesian Front, which has ruled ever since. The Front has clung to the repressive policies of the 1930s, implementing more rigid urban and rural segregation, declaring independence from Britain in 1965, and tightening up the old Land Apportionment Act with its 1969 Land Tenure Act, which purported to have made a racial division of the land "for all time," with whites and blacks each getting some 45 million acres.

Since 1972, however, guerrilla warfare, modeled on the Mozambique pattern, has forced major political changes and has successfully challenged the very basis of white supremacy. Guerrillas have attacked unpopular white farmers, disrupted their labor force, and endeavored to drive the whites back to the cities, leaving the countryside undefended. The Smith regime has responded with a policy of Vietnam-like "protected villages," initiated in 1974. By mid-1977 nearly 20 percent of the black rural population were forced into such villages, and starvation and malnutrition were reported.

With pressures increasing—from the guerrillas and from the Western powers and South Africa, for both of whom the Smith regime had become an embarrassment—the Rhodesian Front has made gradual steps in the direction of heavily emasculated black majority rule, including its March 1977 amendment of the Land Tenure Act, allowing blacks to buy land in the "white" rural areas, as the previous government had urged 15 years earlier. This was followed by the internal settlement of March 1978, which allocates 28 seats to whites in a parliament of 100 in "independent" Zimbabwe, as well as guaranteeing white property, civil service pensions, and citizenship rights.

The likely outcome of such a settlement, as indicated earlier, is a black civil war. One of the major confrontations then will be between the few wealthy blacks anxious to enrich themselves by acquiring intact the white estates, as has happened in Kenya, and the many poor farmers, who for generations have suffered from land policies used as political and economic weapons by the ruling whites and who are entitled to expect a more radical land reform. Such reform, given the inherited colonial structures, will not be easy to achieve, as experience elsewhere in the Third World amply confirms. ❑

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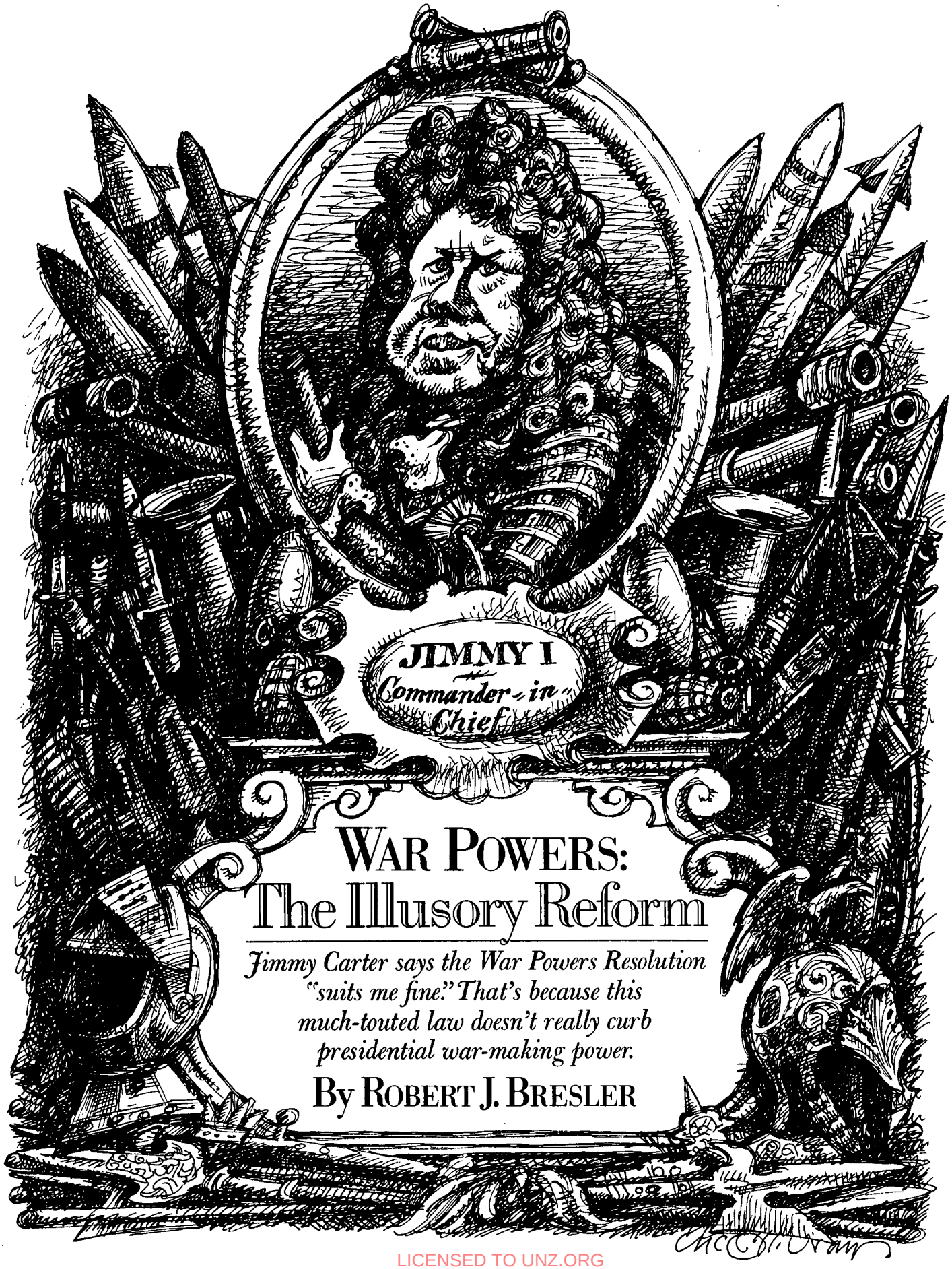

WAR POWERS: The Illusory Reform

Jimmy Carter says the War Powers Resolution "suits me fine." That's because this much-touted law doesn't really curb presidential war-making power.

By ROBERT J. BRESLER

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PRESIDENT JIMMY CARTER'S DECISION to airlift French and Belgian troops into Zaire last month gives a new urgency to an old question: who has the power and authority to control and commit American military forces? Many liberals persist in the illusion that this issue was settled in 1973, when Congress passed the War Powers Resolution. But a close look at the resolution and the ease with which the Nixon-Ford administration sidestepped its provisions demonstrates just how little foundation this optimism has. Nor does the Carter administration promise a new departure. This administration, like its predecessors, is committed to a global vision of American interests; in March at Wake Forest University, Carter said he would develop the military forces necessary "to counter any threats to our allies and our interests in Asia, the Middle East and other regions of the world." This same global vision helped produce the presidential wars in Korea and Vietnam.

Although Carter has stated that the War Powers Resolution "suits me fine," in recent congressional hearings administration spokesmen have refused to say whether the President will abide by its provisions. And last month both the White House and the State Department complained about the "very tight constraints" on Carter's ability to act in Africa. These are ominous signs that the resolution remains nothing more than a liberal mirage.

Embedded in our Constitution is the realization that war and royalism were historical handmaidens. The decision to go to war was to be collectively made by Congress. The debates of the Constitutional Convention and the ratification conventions and the later commentaries of the participants are unambiguous on this point. For instance, during the Constitutional Convention, it was proposed to give Congress the power to "make war." James Madison and Elbridge Gerry moved to change the phrase "make war" to "declare war." Their sole intention was to grant the President the limited power, as Madison put it, "to repel sudden attacks" on the United States. Any military steps beyond that would require the prior approval of Congress.

Only as America became a global power did its leaders feel compelled to discard the original understanding of the war power.

Nor was the commander-in-chief clause designed to alter this relationship between the President and Congress. Madison put it clearly: "Those who are to conduct a war cannot in the nature of things, be proper or safe judges, whether a war ought to be commenced, continued or concluded." Congress was to control the war power and our military forces. President Buchanan put it most concisely in 1859: "The President cannot fire a hostile gun in any case except to repel the attacks of an enemy."

This constitutional doctrine—the original understanding of the war-making power—was not simply a legalism. It expressed a deeply held political perspective of the framers—one which distrusted centralized power, foreign military adventures, large standing armies, and all royal prerogatives. While the Presidents of the nineteenth and early twentieth centuries did engage in crude episodes of gunboat diplomacy, they did not flout the doctrine that the war power resided in Congress. These actions did not result in prolonged armed conflict and were invariably linked to attacks on American lives or property. Presidents Jefferson, Madison, Jackson, Polk, Buchanan, Lincoln, Grant, Arthur, Taft, and Franklin Roosevelt all acknowledged in their public statements the need for explicit congressional authorization of the war power.

Only as America became a global power did its leaders feel compelled to discard openly the original understanding of the war power. The demands of liberal internationalism, the dominant ideology of American foreign policy since 1940, brought with it a constitutional and political perspective incompatible with the original doctrine. Its reasoning went thusly: America's military, economic, and political interests were global and under constant threat. Only the President could marshal the resources, gather the expertise, and command the public support necessary to police these interests. Liberal internationalist Presidents from Truman to Johnson forged the construction of a large, permanent military force and a complex alliance system, and their legal staffs pressed into service a new constitutional doctrine to support the widening scope of presidential action.

In 1940 Attorney General Robert Jackson justified President Roosevelt's destroyers-for-bases deal with Great Britain by arguing that "the plenary powers of the President as Commander-in-Chief" provided adequate constitutional authority for the President to arrange this momentous transaction without congressional authorization or subsequent approval. In each crisis following World War II, Presidents claimed new powers under the commander-in-chief clause. The State Department brandished the clause in July 1950 to justify a full-fledged presidential war in Korea. "The President," the State Department asserted, "as Commander-in-Chief of the Armed Forces of the United States has full control over the use thereof." The next year Secretary of State Dean Acheson carried the argument a step further. In defending President Truman's decision to station six divisions in Western Europe, Acheson lectured a congressional committee that the President's authority to use the armed forces "may not be interfered with by the Congress."

By 1966 the State Department admitted that the original understanding had to be altered in light of our foreign policy requirements. In a legal memorandum defending our actions in Vietnam, the State Department conceded that the framers had only intended to grant the President the power to respond to attacks on the United States. The memo went on to give a lecture combining geopolitics with constitutional law. "In the 20th Century, the world has grown much smaller. An attack on a country far from our shores can impinge directly on the nation's security. . . The Constitution leaves to the President the judgment to determine whether the circumstances of a particular armed attack are so urgent and the potential consequences so threatening to the security of the United States that he should act without formally consulting the Congress." In essence, the war power had become a presidential power, and the original intent of the framers was

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in tatters. The President was claiming substantive war powers as commander-in-chief and the authority to repel sudden attacks not just against the United States but anywhere in the world. A constitutional revolution had occurred.

BUT IT IS MUCH TOO SIMPLISTIC TO attribute this revolution to a crude presidential grab for power. Congress itself was openly complicitous. As early as 1945 many congressional leaders seemed quite aware that internationalism and limited government were incompatible. During the debate over the United Nations Treaty, a leading Republican senator on the Foreign Relations Committee, Alexander Wiley (R.-Wisc.), declared, "There can be no question of the power of the Executive to carry out our commitments in relation to international policing." Another Republican, Senator Warren Austin (R.-Vt.), later to be our ambassador to the United Nations, asserted, "A breach of peace anywhere on earth which threatens the security and peace of the world is an attack upon us." Given this attitude, it was no wonder that five years later President Truman's intervention in Korea went unchallenged.

In the end, Senator Eagleton refused to support the bill: "Instead of curbing executive power," he said, "the bill has dangerously expanded it."

And, after Korea, Congress broadly delegated its remaining powers to the President in the Formosan Resolution of 1955, the Middle East Resolution of 1957, the Cuban Resolution of 1962, and the Tonkin Gulf Resolution of 1964. When Senator Daniel Brewster (D.-Md.) asked Senator William Fulbright (D.-Ark.) during the Tonkin Gulf debate, "Would the resolution authorize sending a large American army to Vietnam?" few in the Senate seemed to blink an eye at Fulbright's response: "It would authorize whatever the Commander-in-Chief feels is necessary."

Only when Congress began its long struggle to end the Vietnam War did legislators realize how firmly entrenched were the new constitutional arrangements they had helped to establish. Congress had lost the peace power along with the war power. In 1973, there was brief hope that Congress might reassert its control over the war power. In June Richard Nixon, weakened by Watergate, was forced to sign an appropriation bill that prohibited the further use of funds for combat activities in Indochina. And in November Congress passed the War Powers Resolution over Nixon's veto. But the debate over the War Powers Resolution did not include a reexamination of the basic tenets of an interventionist foreign policy. Congress did not reduce our military presence abroad or diminish our capability to intervene in political conflicts around the globe. To make matters worse, the resolution that Congress passed compounded the legal problem by conceding to the President powers that the Constitution did not grant him. Congress had failed to reclaim its powers.

By failing to insist upon the original understanding, the War Powers Resolution ratified many of the claims to power that Presidents have made over the past several decades. The original Senate bill sponsored by Senators Jacob Javits (R.-N.Y.), John Stennis (D.-Miss.), and Thomas Eagleton (D.-Mo.) had at least specified under what circumstances the President could send troops into combat without prior congressional approval. This draft granted to the executive the authority to forestall "direct and imminent" threats of attacks on the United States, its territories and possessions, to repel "armed attacks against the Armed Forces located outside the United States," and "to rescue endangered citizens and nationals of the United States located in foreign countries." But the final bill placed a revised version of this section in a "Policy and Purposes" chapter (Section 2), which was the equivalent of putting it in a preamble and making it unenforceable. Moreover, the resolution placed no defined limits on when the President could go to war without prior congressional approval. The Senate also defeated two worthwhile amendments. One would have included covert, CIA-type paramilitary operations under the resolution. Another, sponsored by Senator Fulbright, would have required explicit congressional authority for the President to use nuclear weapons except in response to a nuclear attack. In the end, Senator Eagleton refused to support the bill: "Instead of curbing executive power, the bill has dangerously expanded it," he stated.

The final version of the resolution limited the President's power to make war without congressional authorization to a period of 60 days and provided that Congress could terminate such involvement within the 60-day period by passing a concurrent resolution, which does not require a presidential signature (Section 5). The bill also required the President to consult with Congress "in every possible instance" before introducing troops into combat (Section 3) and to report periodically to the speaker of the House and the president pro tem of the Senate concerning the circumstances, scope, and duration of hostilities and the authority upon which he was acting (Section 4).

But these restrictions were naively conceived and loosely drawn. The resolution granted no authority to Congress not already provided by the Constitution. The congressional power to begin and end wars did not require Section 5; as James Madison said, only Congress can decide when "a war ought to be commenced, continued or concluded." Conceivably the resolution may have given Congress the courage to end the war in Indochina sooner than it did. But preventing the next presidential war, not ending the last one, was the alleged purpose of the resolution. Given the capacity of the executive branch to dissemble and to manipulate events and opinion in the short run, Congress may lack the political independence to end a war only 60 days after it has begun. For example, Senator Richard Russell (D.-Ga.), who harbored serious reservations about the Vietnam War, discarded them once our forces were committed. "Whatever misgivings I had," Russell said, ". . . I have got to support those troops and I have to support the flag when the decision is made." And few politicians were as politically secure as Richard Russell.

In spite of the resolution's weaknesses, the Nixon administration treated it as an unconstitutional attack on the prerogatives of the commander-in-chief. Secretary of State William Rogers told Congress the bill would "forge shackles" on the President. In his veto message President Nixon

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described Section 5 as "unconstitutional and dangerous," and only indicated general approval of Sections 3 and 4, the relatively innocuous consulting and reporting provisions. When Congress passed the resolution over President Nixon's veto, the White House indicated that it would not comply with the statute.

Nixon was true to his word. In July 1974, when Nixon dispatched a naval task force to Cyprus to evacuate nearly 400 American citizens endangered by the Turkish invasion of the island, he displayed complete contempt for the law by refusing even to report to Congress on his action. Section 4a(2) of the resolution requires a report to the speaker of the House and the president pro tem of the Senate 48 hours after troops have been introduced "into the territory, airspace, or waters of a foreign nation while equipped for combat." Equally disturbing and perhaps foreboding was the indifference of Congress. Only Senator Eagleton seemed to take notice. "If this popular introduction of Armed Forces goes unreported," Eagleton asked, "can we assume that less popular, more dangerous uses of force will be faithfully reported?"

EXPERIENCE UNDER THE FORD ADMINistration indicated Senator Eagleton was not far from the mark. Ford fulfilled his responsibilities under the resolution in a perfunctory if not cavalier way. Congress had by 1974 not only passed the War Powers Resolution but seven specific statutory prohibitions on the use of funds for direct or indirect support for combat activities in, over, or around Indochina. The restrictions were quite clear. Just how meaningful they were was demonstrated during the Vietnam evacuation. In order to gain the political support of Congress for the evacuation of Americans

The Mayaguez incident in 1975 made clear that nothing had changed from the days of Truman and Korea or Johnson and Vietnam.

and "those Vietnamese to whom we have a very special obligation," Ford requested on April 10, 1975, that Congress clarify the legal situation surrounding the use of military forces in Southeast Asia. No congressional action was forthcoming. Ford then authorized the operation on his own. When it was completed, 10 to 15 Vietnamese were evacuated for every American. While some legal case could be made for the President's authority to evacuate U.S. citizens, none could be made for employing the military to evacuate foreign nationals. Ford justified his actions on moral grounds. Ford's legal advisers—Monroe Leigh and Martin Hoffman—echoing doctrines of the past, believed the President's powers as commander-in-chief were virtually immune from congressional control. Leigh and Hoffman wrote Representative Clement J. Zablocki (D.-Wisc.) in June 1975, "We do not believe any single definitional sentence could encompass every aspect of the Commander-in-Chief authority." Monroe Leigh told a House committee that the "President thought that he had adequate constitutional power despite the funds limitation provisions to take out Americans and to take out those foreign nationals whose rescue was . . . so interwoven with that of U.S. citizens."

Unlike Nixon during the Cyprus situation, Ford did not ignore the War Powers Resolution. He simply interpreted it in such a way as to render it meaningless. The Ford administration took the position that the evacuations did not technically constitute the introduction of troops into hostilities or into situations where they were imminent. Yet during the evacuation two marines were killed at Tan Son Nhut airport, a navy helicopter was lost, and its two crew members killed. By interpreting this as a nonhostile event, the President was not obligated under Section 3 to consult with Congress.

The *Mayaguez* incident in May 1975 made clear that nothing had changed from the days of Truman and Korea or Johnson and Tonkin Gulf. On May 14, at 4:45 PM, two days after the *Mayaguez* was seized, President Ford authorized U.S. military operations off Cambodia. Two hours after the order, 17 congressional leaders were told of these military plans. Congress responded with hosannas, just as they had after the Tonkin Gulf incident. The Senate Foreign Relations Committee, where the War Powers Resolution originated, unanimously approved a resolution stating, "we support the President in the exercise of his constitutional powers within the framework of the War Powers Resolution to secure the release of the ship and its men." Only days later did the really important information about the operation become available: The marines had landed on the wrong island, 41 U.S. servicemen had been lost, our largest nonnuclear weapon had been dropped in the jungle, and a Cambodian oil dump and airfield had been attacked after the *Mayaguez* crew was released.

Yet even after all this became apparent, Congress seemed unable to constrain itself in praise of the President. Ford's grudging compliance with the law seemed more than enough to satisfy Senator Charles Percy (R.-Ill.), who exuberantly declared on May 25, "I think this is a very important first test of the War Powers Resolution. I would say, without any equivocation, that the executive branch and the legislative branch passed the test."

In his perfunctory report on May 15 to Speaker Carl Albert (D.-Okla.) and Senate President Pro Tem James Eastland (D.-Miss.), required under Section 4, Ford asserted that the *Mayaguez* operation "was ordered and conducted pursuant to the President's constitutional Executive power and his authority as Commander-in-Chief of the United States Armed Forces." Roderick Hills, a White House legal counsel, explained that the President had acted "under his constitutional war powers to protect the lives and property of Americans." Among other things the President and his lawyers had ignored an 1868 law directing the President to use methods "not amounting to acts of war" and to communicate promptly to Congress when an American citizen was wrongly deprived of his freedom by a foreign country.

On two other occasions—the evacuation of U.S. citizens from Lebanon during the civil war there in June 1976, and the Korean "tree-cutting" incident in August 1976—Ford, following Nixon's example, simply ignored the resolution. In neither case did Ford even trouble to make a report to Speaker Albert or Senator Eastland. During the "tree-cutting" incident a significant number of tactical aircraft were sent to Korea. The State Department's legal staff reassured Secretary of State Henry Kissinger that no action under the

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resolution was required. The resolution mandated, however, a presidential report to Congress when armed forces are introduced in "numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation." The State Department took the incredible position that this applied only to people, not equipment.

When Monroe Leigh testified before a House subcommittee investigating the Vietnam evacuation, he made it clear how far the Ford administration was prepared to go in thwarting the resolution. Leigh claimed that even if Congress had passed a concurrent resolution requiring the withdrawal of troops from hostilities or had allowed the 60-day period to lapse without authorization, the President could legally continue any military action by using unexpended Defense Department funds. Representative Stephen Solarz (D.-N.Y.) was stunned by Leigh's testimony when he discovered that the Pentagon had available at the end of fiscal 1976 over $80 billion of appropriated but unexpended funds.

Asked if this administration considered the resolution constitutional, Hansell said, "We'd like to avoid getting into that kind of dialog."

President Ford, soon after leaving office, revealed his genuine disdain of the resolution. Ford told a University of Kentucky audience on April 11, 1977: "The United States was involved in six military crises during my presidency: The evacuation of U.S. citizens and refugees from DaNang, Phnom Penh, and Saigon in the Spring of 1975, the rescue of the *Mayaguez* in May 1975, and the two evacuation operations in Lebanon in June 1976. In none of those instances did I believe the War Powers Resolution applied. . . . I did not concede that the resolution itself was legally binding on the President on constitutional grounds."

In the face of such arrogant assertions of constitutional authority, it is no wonder that Congress warmly greeted any change of attitude by the Carter administration. President Carter remarked last year that the resolution was a "reduction, obviously, in the authority that the President has had prior to the Vietnam War, but I think it is an appropriate reduction." When Secretary of State Cyrus Vance was asked at his confirmation hearing by Senator Javits, "Do you or the new administration see any problem with the good faith observance of the War Powers Resolution," Vance replied simply, "No." On the basis of these brief comments, Representative Zablocki jumped to conclude there was "a sincere commitment on the part of the Administration to abide by the law—both in letter and in spirit." Similarly, Javits expressed his "very deep gratification at the position taken by this Administration."

But there was in Carter's and Vance's statements less than meets the eye. Herbert J. Hansell, the State Department's new legal adviser, carefully qualified those endorsements in testimony before the Senate Foreign Relations Committee last summer. In so doing he sounded much like his predecessor, Monroe Leigh. Hansell told the committee he thought Vance's statement was only meant to apply to the consultation provisions of the resolution, and he was not willing to say whether the Carter administration considered the entire resolution constitutional. Hansell declared, "We would like to avoid getting into that kind of dialog."

CLEARLY, THE CARTER ADMINISTRATION is not interested in the efforts of Senator Eagleton and Representative Solarz to strengthen the War Powers Resolution. Eagleton and Solarz want to place mandatory and specific restrictions on when the President can use military force without prior congressional authorization—bringing the resolution closer to the original Senate version. Solarz would like to close the loophole spotted by Monroe Leigh. Solarz's amendment would have any congressional action ending hostilities under the resolution include an automatic cutoff of funds. The Carter administration opposes these amendments on the grounds that consideration of them would reopen the wounds of the past. "A prolonged debate," Hansell declared, "over elusive constitutional issues . . . could well produce new uncertainties." Moreover, the administration is now chafing under congressional restrictions on its ability to conduct covert activities and give military aid to nations in Africa. Last month the State Department issued an eight-page listing of "restrictions on presidential authority to provide assistance to foreign nations and conduct foreign operations." Although Andrew Young, ambassador to the United Nations, has denied that there are too many restrictions on the President, both Carter and Zbigniew Brzezinski, the national security adviser, seem to want greater leeway to counter Cuban and Soviet activities in Africa.

One does have to wonder how seriously Congress now takes the entire issue. Javits and Zablocki are satisfied with Carter's and Vance's vague assurances and are unwilling to support Eagleton and Solarz. But even if the resolution were strengthened, how much would it matter? With Vietnam a memory, Congress has renewed its enthusiasm for increased defense spending. And the Carter administration, in spite of its softer rhetoric, seems to share the same global definition of our interests as did its predecessors. In a budget briefing to the press on January 23, 1978, Defense Secretary Harold Brown said, "We are planning to have, and do have, forces that can be sent to any one of a number of widely geographically separated areas of the world, in a short time, with substantial combat capability." Brown's statement is not mere rhetoric. He has ordered the military to form a quick-strike team of army and marine divisions that can respond to sudden conflicts. Brown apparently has the Persian Gulf in mind. Surely power cannot be lavishly granted to the executive branch with one hand and hedged by legal restrictions with the other. Once the balance of power between branches of government has been so decisively tipped, a few laws cannot alone set it right. Congress certainly has ample authority under the Constitution to control the war power without the resolution. The question is whether it has the desire to enforce that authority. This requires an effort far more ambitious than what Eagleton and Solarz intend. It is the war-making machinery, not just the authority, that Congress must reclaim. If the vast military-intelligence bureaucracy that gave us the disasters of the past were reduced and controlled, the debate over the War Powers Resolution would be superfluous. Unfortunately, the debate already is superfluous, but for the wrong reasons. ❑

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WEST GERMANY'S WAR ON TERRORISM

By Irene Dische

In the struggle between the state and the terrorists, the most important victim has been civil liberties.

A NOTABLY UNMOURNED casualty of the cross fire between West German terrorists and the state has been civil liberties. The terrorists made their move back in September when they kidnapped industrialist Hans-Martin Schleyer. The German Supreme Court rejected the argument of Schleyer's son that the state guaranteed an individual's freedom and was obligated to pay any price for it—in this case, the release of imprisoned Baader-Meinhof terrorists. The court held instead that the rights and lives of innocent people would be risked if dangerous terrorists were freed. But the government has not shown the same respect for the civil rights of blameless citizens in the months since Schleyer's body was found in an abandoned car. The legal weapons they have turned against the terrorists do not risk life and limb, but they endanger, just as recklessly, the civil liberties of innocent bystanders.

Kontaktsperre, the government's first official response to the terrorist action, came during the last days of the Schleyer kidnapping. *Kontaktsperre,* literally contact-locked, is the solitary confinement of suspects, as well as convicted terrorists, for six weeks during an emergency. In September, this prevented prisoners from passing advice or plans by way of their lawyers to comrades on the outside. It also qualified the right to legal counsel, altered legal procedure for one group of people, and interfered with defense attorneys' efforts to prepare cases.

Other legal measures followed in

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February, and more are on the way. Under the terms of laws passed between 1974 and 1977, freedoms of speech, press, and occupation were already qualified, and the attorney-client relationship impaired. But these statutes were aimed at the terrorist and the potential terrorist, the so-called "sympathizer." The most recent laws, passed this winter, change criminal procedure, making it easier for the state to collect evidence, but at the expense of individual rights. Some involve, *by definition,* the bystander: Police may arrest anyone lacking personal identification and detain him for 12 hours; entire buildings may be searched where terrorists might be hiding; motorists may be checked at special control stations; the grounds for barring an attorney from a terrorist trial have been broadened; and a glass pane may separate attorney and client during prison meetings. If these laws do not violate the letter of the German Constitution, they do violence to its spirit.

The German public, which will suffer the effects of antiterrorist controls, lobbied for just such measures. Earlier laws did not prevent terrorism last fall. Instead of concluding that the legislation had served no purpose and was unnecessary, private citizens called for escalation. They clearly believe, as both the terrorists and the state have argued, that West Germany is at war. If, by the logic of war, the terrorists make hostages of innocent people—the very people whose lives they want to improve—then war is the condition that allows the state to circumscribe civil liberties. This war, which claimed 10 lives in 1977, makes dissenters seem like traitors; and in its name, Chancellor Helmut Schmidt and his colleagues seem ever more ready to trade off liberty for security.

Chances are that the new legislation, like the earlier laws, will not prevent terrorist violence. The street and building searches that followed the Schleyer kidnapping yielded only an embarrassing haul of car thieves and husbands ducking alimony payments. Nor did detaining persons without identification, which was also tried, trap any criminals. For one thing, according to the government's liberal estimates, there are only about a hundred terrorists to catch. Forced identification did provide the state with a long list of sympathizers, and it certainly harassed people.

Inefficiency, not legal laxness, might be partly to blame for Germany's failure to track down the terrorists. Inefficiency seems to explain why Stammheim prison officials could not keep guns out of the top-security cells of what has been called the "safest prison on earth." Similarly, the police were poorly organized, with little coordination between state and federal officers. The legal measures enacted this winter are indeed intended to increase police effectiveness, but they are, instead, clumsily repressive.

THE PUBLIC BELIEVES, AS BOTH THE STATE AND THE TERRORISTS HAVE ARGUED, THAT GERMANY IS AT WAR.

TWO OF THE MOST RECENT laws do not affect the general public, but strike at so-called "terrorist lawyers" who represent the accused. Formerly, the evidence required to exclude a lawyer from a trial—evidence proving that he unduly sympathized with his client or actually "supported a terrorist group"—had been hard to come by. It was often easy to show that the lawyer had radical beliefs, but that alone could not make a case. Today, depending on the judge, it might. The state has also applied other measures to keep possibly sympathetic lawyers from court. Since 1977, attorneys may serve only one terrorist client in their lifetime. Attorney Jutta Hendges-Nahr was fired because, five years earlier, she had assisted at a terrorist trial—for one day.

Finally, the installation of a glass pane between attorney and client, commonplace in this country, should make little difference to an already constrained relationship. German officials legally oversee all written correspondence between lawyer and client, a practice impossible in this country. Police abuses have also repeatedly infringed on attorney-client privacy. Last spring, police wiretapped Andreas Baader and his attorney as they discussed their defense strategy in Stammheim prison.

This piecemeal attack on terrorism has gradually led to a permanent—if artificial—state of emergency in Germany. The state may act quickly and legally against its foes; civil rights are of secondary, or tertiary, importance. Almost every state has legal provisions to meet national or natural crisis, and that usually includes the temporary suspension of certain rights. Such broad emergency laws have existed in the German Constitution since 1968. Today's terrorism does not fulfill the terms laid out by the Constitution; it does not amount, in cold figures, to more than sporadic violent crime. The authorities thus cannot invoke the broad emergency laws. But they dismiss the numbers, arguing that because terrorism does not fit into the categories of either conventional crime or conventional political dissent, it is a "modern emergency." And so the "modern" response is this permanent suspension, under new laws, of the civil rights of suspected terrorists.

In fact, terrorism is a familiar political problem which Germany faced during the Weimar years. Some say that the Weimar constitution was better equipped to handle terrorism, and might even suit German justice better this Republic around. Under Article 48, the government at Weimar had the right to suspend civil liberties or call in the army in the event of a "grave civil disturbance." Article 48 has earned an infamous place in German history. Hitler alone did not give it notoriety—although he was the last to use it—because in 14 years it was invoked 250 times. But some historians argue that the excessive use of Article 48 reflects the political excesses of the period. In any case, it gave the government the right to employ measures quickly before they were strangled in a wrangling Parliament. And at least a broad emergency law must be justified each time it gets called upon. That might make it preferable to today's hungry nibbles at civil liberties. Certainly, a government is not likely to invoke emergency law when international opinion—especially in Germany's case—demands its justification.

But proponents of the latest antiterrorist laws argue that a general emergency clause like Weimar's resembles a loaded gun waiting to be picked up. At least when the regulations are spelled out, they say, the

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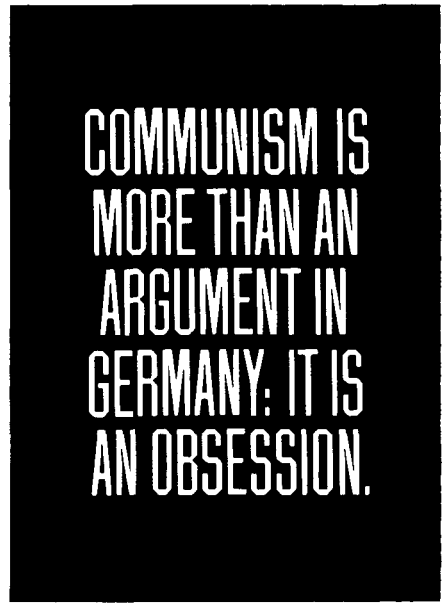
government cannot exceed them. Or can it? Indeed, abuses of the *Radikalenerlass*—job bans for leftists—and other antiterrorist laws are rampant, particularly at the lower levels of administration. Recently, a school teacher was banned from his profession because, as a former conscientious objector to the draft, he could not prove he would "actively" support the free democratic order. In another incident, a Yugoslavian *Gastarbeiter* was sentenced to three months in prison for violating a 1976 statute that forbids "verbally supporting a terrorist crime." The man had cheered Schleyer's death: tactless, yes; culpable, no.

Protests by the media against abuses of civil liberties seem to go unnoticed. Often, too, the media ignore what has become commonplace. And then, criticism of the government is not accepted in Germany as it is here. The staid *Frankfurter Allgemeine*, with its clauses stacked like jets circling over Kennedy airport, is often compared to the *New York Times*, but it would probably never reprint the likes of the Pentagon Papers. In fact, Germany has had a similar affair, worth recounting. In 1976 the German FBI illegally bugged a nuclear engineer named Traube, because he allegedly associated with suspected terrorists. A reporter leaked this to *Der Spiegel* last spring. Today, the journalist is in jail, his indiscretion about the government's illegal activity called "endangering the security of the state," a violation of the Constitution.

Such abuses may simply be called stretching the law, and all legal systems have their elastic places. In fact many recent laws of the antiterrorist genre are the formal stretching of statutes that were already on the books. Laws forbade attorney-client conspiracy long before the "attorney lock-outs" of this winter; deviations from teaching programs in schools were forbidden before the *Radikalenerlass*—job bans—excluded leftists from the school system. Elaboration and exaggeration of these laws simply became the new norms. Thus, laws that forbade advocating the overthrow of the government became more and more explicitly aimed against the communist doctrine of working-class revolution, and finally made the advocacy of communist or leftist doctrines punishable.

But Germans, possibly because of their past, fear informally stretching the law, and they worry about legal loose ends. That would explain why public scrutiny sometimes causes a flurry of



unnecessary law-making. Last year, during the Stammheim prison trial, which received international attention, the defendants went on a hunger strike. Immediately, a law was passed allowing litigation to proceed without defendants weakened by self-induced illness. (So many other regulations were coined during that trial that they earned the nickname "Stammheim state law.") In fact, it has long been an uncontested rule of procedure that a defendant who renders himself unfit to attend his own trial—for example, by drunkenness—must forfeit his right to be present. "We didn't want to hear from the world press that Germans once again are trying people in absentia," explained one lawyer, adding, "We are burnt children—we are afraid of hurting ourselves with the law." If fears of fascism produce this pointillistic accuracy, they are sadly misapplied. A characteristic of Third Reich law was precisely such methodical subtractions of civil rights, although of course the Reich dealt in much larger numbers.

Paradoxically, what underlies these new laws is the notion that democracy is fragile and in need of protection against its enemies. "The Weimar constitution allowed the state to self-destruct democratically," says one legal scholar in Bonn. "It laid out procedure of government; it left out principle. Today it would be impossible for us to elect another Hitler, even if the majority voted for him." The German Constitution allows the banning of groups or parties that advocate the destruction of the state. Not surprisingly, Skokie's marching Nazis horrify many Germans, who cannot understand American permissiveness.

In obvious response to anti-Semitism, ethnic insults are in some circumstances illegal in Germany. The state, too, is well-protected—it is a crime to "insult" the state. In general the needs and rights of the state seem to weigh in evenly against individual rights. This resulted in an interesting twist to the Traube affair last spring, when the state defended its illegal wiretap of the engineer by ingeniously citing a paragraph of the penal code which excuses certain crimes committed during an emergency. Thus, a man may shoot another in self-defense. The state, fearlessly applying an analogy, argued that it, too, faced an emergency: it had to protect itself against terrorism, and illegal surveillance was its only recourse. The records of the wiretap completely exonerated Traube, however, and the government's argument, which terrified liberals, did not wash. Had Traube been found guilty, the state's strategy might have succeeded.

FEARS ABOUT GERMANY'S commitment to democracy continue to haunt German justice and its reputation. At home and abroad, critics easily recall the past. History dogs the ruling Social Democratic Party (SPD), too; indeed, it has forced the party to come up with tough antiterrorist legislation. The Social Democrats began as a working-class party with Marxist ideology and apostles like Rosa Luxemburg and Karl Liebknecht. Even today's Social Democratic leaders, men like Willy Brandt and Herbert Wehner, were once active in the Communist Party. The SPD still represents workers in matters of the heart—that is, the purse—but it struggles to overcome the opposition's charges that, because of its past, the party is "soft" on communism.

Communism is more than an argument in Germany: it is an obsession. It preoccupies, in particular, the members of the older generation, who seem to hate communism with all the pain of their past. After the war they sought pride in economic success, but success seemed fragile. And it could not fill in gaps left by the war—boundaries remain artificial, tradition is lost, there is no past to be proud of. Communism seemed the greatest threat to *Wohlstand*, the standard of living, but it also offered anticommunists the gift of self-righteousness—don't look at us, look at them. So communists became the Republic's new *Untermenschen*, Germany's

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latest scapegoats.

A misunderstanding between generations triggered the confusion between communism and terrorism. For older Germans, the years of postwar reconstruction were a time of political withdrawal. But this period taught their children activism. Their offspring asked questions and became idealists. According to Karl-Dietrich Bracher, a German historian, many young people saw the threat to democracy exclusively on the right, and accordingly took antifascist positions too far on the left. They were not tactful with their elders. The young growing up in the sixties talked about changing a society that finally seemed stable; they expressed contempt for the materialism that so consoled their elders. Then, in the quiet seventies, the extraparliamentary opposition to which they belonged fell apart, breaking into those who would use violence to change society and those who would not. But the media and the conservatives read these events incorrectly and formulated the general equation: young-and-leftist equals terrorist. And then, with little regard for consistency, they dubbed the actual terrorists, who were growing up in another generation altogether, the "Children of Hitler."

The terrorists, born to a recovered Germany, are more nearly the children of an affluent, inward-looking society. It is significant that the youngest batch of them, the "Schleyer kidnappers" and "Ponto murderers," got to know each other as patients in the care of a Heidelberg psychiatrist. He persuaded them that the only way to cure themselves was to change society. What followed can be seen as a kind of extreme narcissism—the politics of those who feel they conquer the world each time it squirms.

THESE TERRORISTS DO NOT respond to argument. So the changes in procedure enacted this February aim simply to root them out of society. The Social Democrats are not unaware that these measures they sponsored are repressive. But many felt they had to compromise. Since terrorism became a problem during the SPD's tenure, and since terrorism and communism have been inextricably linked, the current crisis falls squarely on its ledger. The opposition Christian Democrats have made the most of this, calling for more restrictions on the left, including leftists in the Social Democratic Party. (To

SINCE TERRORISM BECAME A PROBLEM DURING THE SPD'S TENURE, THE CRISIS FALLS ON ITS LEDGER.

date, 70 members of the SPD have been kept out of civil service jobs because of their politics.) The Christian Democrats had very stern measures in mind. They advocated *Todesschuss*—shoot-to-kill orders directed at terrorists; wiretapping of entire neighborhoods where terrorists might be hiding; making participants liable for any violence that occurs at a demonstration (which would effectively have curtailed the right to demonstrate); and a silly prohibition on disguises at public gatherings (except carnivals).

Since the conservatives' hostility to the left found such deep resonances in the public (in the Christian Democratic stronghold southwest of Bonn, the locals refer to SPD voters as "reds") the Social Democrats had to compromise to stay aloft politically. This has happened so often in the past year that a Social Democrat once said in despair, "In this country the Christian Democrats rule, although they are not in power." Even so, the SPD's concessions almost failed. In October, the Christian Democrats made life easy for the ruling coalition by supporting the *Kontaktsperre*; thus the measure could pass despite lack of support within the socialist party itself. But in December the Christian Democrats made it clear that they considered the SPD's latest proposals pap. So last winter, the SPD coalition, with its slim ten-vote majority, could have lost either on ten abstentions or five nays. The Free Democrats, the liberal smaller sister of the coalition, unanimously supported the proposals, leaving the Social Democrats to put their own house in order. For months a group of ten delegates took advantage of the narrow margin to bargain. The four most vociferous deputies had also voted against the *Kontaktsperre* in October. This time they were referred to as the *Viererbande*—gang of four—a play on the terrorist group's name, Baader-Meinhof-Bande. The dissenting deputies managed to force changes in the original proposals, which would have permitted the detention of unidentified persons for 48 hours, not just 12 hours, and would have made entire neighborhoods, not just single buildings, open to search without warrant.

Deputies whose convictions forced them to oppose the new measures were told their consciences were responsible to the party that supported them. Not only traditional working-class unanimity was at stake; hanging in the balance was the future of the ruling coalition. Parliament's most persistent rumor was that the Free Democratic Party was growing impatient with its socialist partner. The liberals, who wish for social quiet in which to conduct business, may someday link with the conservatives, if that's what it would take to end public uneasiness. They have already done so in the senates of lower Saxony and the Saarland. So it indeed became a question of conscience for dissenting deputies whether they should vote against their beliefs or give the Free Democrats the excuse to form a coalition with the Christian Democrats. They had to consider that a few years of opposition in a CDU-ruled state might be more than the usual tonic for honesty. "The 'nay-sayers' could live in the opposition with their principles untarnished, and without influence," mocked the newspaper, *Die Zeit*.

The dissidents, who held the future of their party in their hands and knew it, decided to let the latest antiterrorist laws pass by one vote. The episode was oddly reminiscent of the occasion in 1914 when the Social Democratic faction averted its face from ideology and voted "yes" on war credits.

"Who knows, after all, what the liberals would have done if we hadn't gone along," admitted Klaus Tüsing, a deputy who voted "yes" at considerable expense to his libertarian convictions. "Maybe they'll want to get out of the coalition, anyway."

"Maybe," he agonized elsewhere, "I should have grabbed the historical chance for a finale." And now he, with all the rest, must wait and hope that the newest measures will not be abused, that German democracy is marking time rather than moving in the direction toward which it already points. ❑

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THE WHITE MAN'S INDIAN: Images of the American Indian from Columbus to the Present, by Robert F. Berkhofer, Jr. Alfred A. Knopf, 261 pp., $15.00.

The red man's burden

RICHARD DRINNON

"*FOR FIFTY LONG YEARS* they jailed us if we danced the sun dance," recalled Sioux medicine man Lame Deer shortly before his recent lamented death. Back in 1904, during one of those long years, a gallery of statues at the Louisiana Purchase Exposition in St. Louis celebrated the "Winning of the West," and froze the perception citizens of the Republic had of themselves and their sometime enemies. One allegory showed three Indians going through, in the words of the exposition secretary, "one of their wild dances. . . . Viewed from any standpoint the impression made by the group is that of wild frenzy."

Three centuries of fearful clichés about the barbarous madness of Indian dances had come to temporary rest in the statue; the gap between its "wild frenzy" and the communal reverence Lame Deer experienced in "using his body like a prayer" roughly marked the distance between the creatures of the European imagination called "Indians" and the original indwellers of the Americas. Robert F. Berkhofer, Jr., author of a useful study of Protestant missionaries, now takes up this theme of "Indians" as inventions, and shows how whites from Columbus to the present have cherished their term, denied the gap between "Indians" and Native Americans, and thereby managed to reject the living reality of the peoples of the land.

The White Man's Indian is a valuable compendium of images of first Americans contained in law, literature, philosophy, history, the arts and sciences. The first three of the four parts were originally intended for the forthcoming Smithsonian *Handbook of North American Indians* (*sic*); even as expanded here, they retain the relatively lifeless survey form in which the reader is told rather than shown. Capsulated characterizations, definitions, and citations frequently make the text difficult to distinguish from the comprehensive bibliography. These infelicities of style are largely attributable to the imperatives of the topic, its depth, breadth, and mountain ranges of secondary sources, all of which force Berkhofer to be sternly selective and compressive. Still, at least three problems with the book stem less from space and time than from approach and concept.

As an intellectual historian in the

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J. PUTNAM

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tradition of Arthur O. Lovejoy, Berkhofer traces concepts and images down through the centuries as though they were vapor trails high in the realm of the abstract. He is rightly concerned lest his streams of "ideas seem disembodied," for their creators and carriers—individuals, ethnic and political groups, or just simply people—are indeed notably absent from his pages.

One consequence can only be described as an anomaly in a work of this stature. The reader is told about the gap between the invented Indian and the breathing Native American, which other evidence leads me to accept without hesitation. But nowhere is that gap ever established (even through the kind of rough illustration in my first paragraph above) nor are its dimensions, and the particulars that constitute it, ever made completely clear to the reader. Berkhofer stays with the white inventions or projections, as I think of them, and leaves the reader to imagine the beings they stereotype.

The lost opportunity here is all the more surprising in a work so sympathetic to the victims. A Lame Deer or a Black Elk might easily have been invited to cut through the projections with a few authentic words from the denied world of native peoples: "The white man does not understand the Indian for the reason he does not understand America," said Sioux Chief Standing Bear. "The roots of the tree of his life have not yet grasped the rock and soil. The white man is still troubled with primitive fears. . . ." Next best to shamans and chiefs would have been white witnesses who, for one reason or another, did "go native"—the John Tanners, Mary Jemisons, and John Dunn Hunters—but they never surface in the thin discussion of captivity narratives. And from within the world of the projectors of Ignoble and Noble Savages, Wilcomb Washburn has argued, and Berkhofer duly notes, that Native Americans frequently had the lofty virtues of the latter half of the image. Well, is Washburn correct or not?

THE ORIGINS AND REASONS for the persistence of the image also remain relatively obscure. From Spanish sources going back to Columbus's misdiscovery, English colonizers had the term "Indians" in their heads when they came to the Atlantic seaboard. Did it merely stand for a rationalization contrived to justify the ensuing subjugation, dispossession, and extermination? In discussing the term's extraordinary endurance throughout the colonial and national periods, Berkhofer seems to interpret it as representing a straightforward rationalization: "The answer lies once again in the long-term competition for the same natural resources by peoples with different cultures and levels of social organization." Yet elsewhere he recognizes that not only resources but labor and souls were at stake, and he seems to accept the likelihood that the image had deeper roots. Why Indian-hating will persist as long as Indians do (as Herman Melville predicted), even when they have been stripped of their last resource, is one of the good questions left dangling, as is the question of whether "Indian" was a racist term all along.

"Red Skins" was another "name Whites commonly gave Native Americans, but it did not carry, in my opinion, the immense symbolic weight that Black did for Afro-Americans," Berkhofer tells us; but again we are told and not shown, as the behavioral approach leads him away from the irrational underpinnings of racism. "Red" may have had lighter symbolic weight than "Black" and still have carried immense significance, as a close look at some of his sources reveals. In her archetypal *Soveraignty and Goodness of God* (1682), Mary Rowlandson of the Massachusetts Bay Colony described the victory celebration of her "barbarous" captors: "Oh the roaring and singing and dancing of those black creatures in the night." *The Last of the Mohicans* (1826), Fenimore Cooper's novel on miscegenation, carried an epigraph from Shakespeare that spoke directly to the continuing obsession with the color of these demoniacal children of darkness: "Mislike me not for my complexion. . . ." And Berkhofer himself quotes Mark Twain on the despicable "Goshoots" as "small, lean, scrawny creatures; in complexion a dull black like the ordinary American negro" by virtue of the dirt they had been wearing for generations. Anglo-Americans had no trouble in identifying Indians as dark nonwhites and therefore none in defining them as nonpersons. As James Madison, who well knew that both nonwhite races were outside of civil society, noted in 1826: "Next to the case of the black race within our bosom, that of the red on our borders is the problem most baffling to the policy of our country."

From first to last, Indians were seen and treated as inferior. Such attitudes

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Historians of the family would do well to remember its present plight was prefigured by the assault on Native American kinship and family structures.

and acts long predated the "rise" in the nineteenth century of romantic and "scientific" racism (Berkhofer sometimes puts the latter in quotation marks). But this issue, too, remains dangling in an ambiguous context created by the initial shying away from the symbolic significance of color and its attendant prejudices and fears deep within the Western psyche.

Happily, none of these problems seems all that significant when placed beside "Imagery and White Policy," the concluding part of the book, wherein Berkhofer's approach comes alive as he ties white images to white actions. His solid achievement here proves him one of the few American historians capable of seeing the forest over the underbrush and trees of his data. In short compass, he shows that the relatively unchanging view of Indian inferiority established a basic pattern that varied little among the colonizers of different nationalities, or between English colonials and citizens of the Republic. Indian-haters wanted the lands of Native Americans and wanted their possessors dead or removed; "Friends of the Indian," as philanthropists called themselves, wanted their souls and wanted them subject to their ministrations. Both teamed up to make them sojourners in their own land and alien wards of the "colonial office," as young Native Americans later called the Bureau of Indian Affairs.

HISTORIANS OF THE FAMILY would do well to remember that its present plight was prefigured by the all-out assault on Native American kinship societies and family structures. On the national level, the first professional apparatus of guardians and caretakers was the BIA's crew of tribe-tamers. They set out to strip their wards of their languages, forbid dancing and other integral expressions of their cultures, cut their hair, instill the virtues of industriousness, punctuality, and the like, with the aim of turning out short-haired WASPs, no matter how tawny. Herded onto reservations, subjected to unceasing surveillance, given to understand that their cultures were, at best, inane, the recipients of all this help, naturally enough, betrayed symptoms of alienation and demoralization—whereupon their keepers responded with greater doses of help, and so on down to the most recent exemplification of the "self-fulfilling prophecy."

All this professional nurturance seemed harmless and received relatively little attention, so long as it was confined to Native Americans, Afro-Americans, the "new" immigrants, the retarded, the mad, or the "savages" called criminals. But now that we are all natives, so to speak, all in the hands of the watchers and keepers and helpers, perhaps what has been happening to Native American families all this while will receive the serious attention it merits. In any case, *The White Man's Indian* helps demonstrate that the first Americans were the first victims of the professional social pathologists, even if they called themselves agents, and thus of the WASP drive to banish mystery from the world, strip it of its human idiosyncrasies, and subject it to regimented reason.

Professor Berkhofer finishes his study of the singular fixity of red-white relations wryly and properly pessimistic about the slim chance of Anglo-Americans ever changing their racist ways. Yet I see a bright streak, however reflected and paradoxical, in the unremittingly harsh and bloody story he outlines. Despite all the help, Native Americans have not vanished. The red man's burden has been to carry the projections heaped upon him by whites who exorcised the animalistic parts of themselves and then called these parts "merciless Indian Savages," as they appear in the Declaration of Independence. Somehow the red man endured and now, by word and by example, has taken up the additional burden of reminding Anglo-Americans of their lost communal sanity and lost wholeness—of how to see not with the eyes and mind only, but, as Lame Deer put it, also with "the eyes of the heart."

LEGEND: The Secret World of Lee Harvey Oswald, by Edward Jay Epstein. Reader's Digest Press/McGraw-Hill, 382 pp., $12.95.

A legendary Oswald

PAUL L. HOCH and RUSSELL STETLER

DESPITE ITS FAILURE AS A biography of Lee Harvey Oswald, *Legend* is an intriguing book. It suggests that much of Oswald's visible career following his defection in 1959 to the Soviet Union was the enactment of a "legend"—a false biography, a cover story concocted for Oswald by the KGB after he fell under their control before or during his defection. A stronger thesis is implied: although Epstein coyly says that neither he nor his CIA sources is accusing the KGB of having plotted the assassination, the chapter entitled "Day of the Assassin" (on Oswald) is part of a section called "The Mission."

Epstein assumes that Oswald was guilty as charged in the Kennedy assassination, but he is inexplicably indifferent about whether Oswald acted alone. He devotes only a six-page appendix to the status of the evidence. In it, he omits and distorts controversies, misconstrues expert opinion, casually speculates in areas where facts are available, and avoids any evidence of Oswald's innocence.

Epstein sheds some new light on Oswald's life with the marines in Japan, and in Russia, but the hypothesis that Oswald was a KGB agent remains unproven. Epstein never attempts to

PAUL L. HOCH and RUSSELL STETLER are co-editors of The Assassination — Dallas and Beyond, *published by Random House.*

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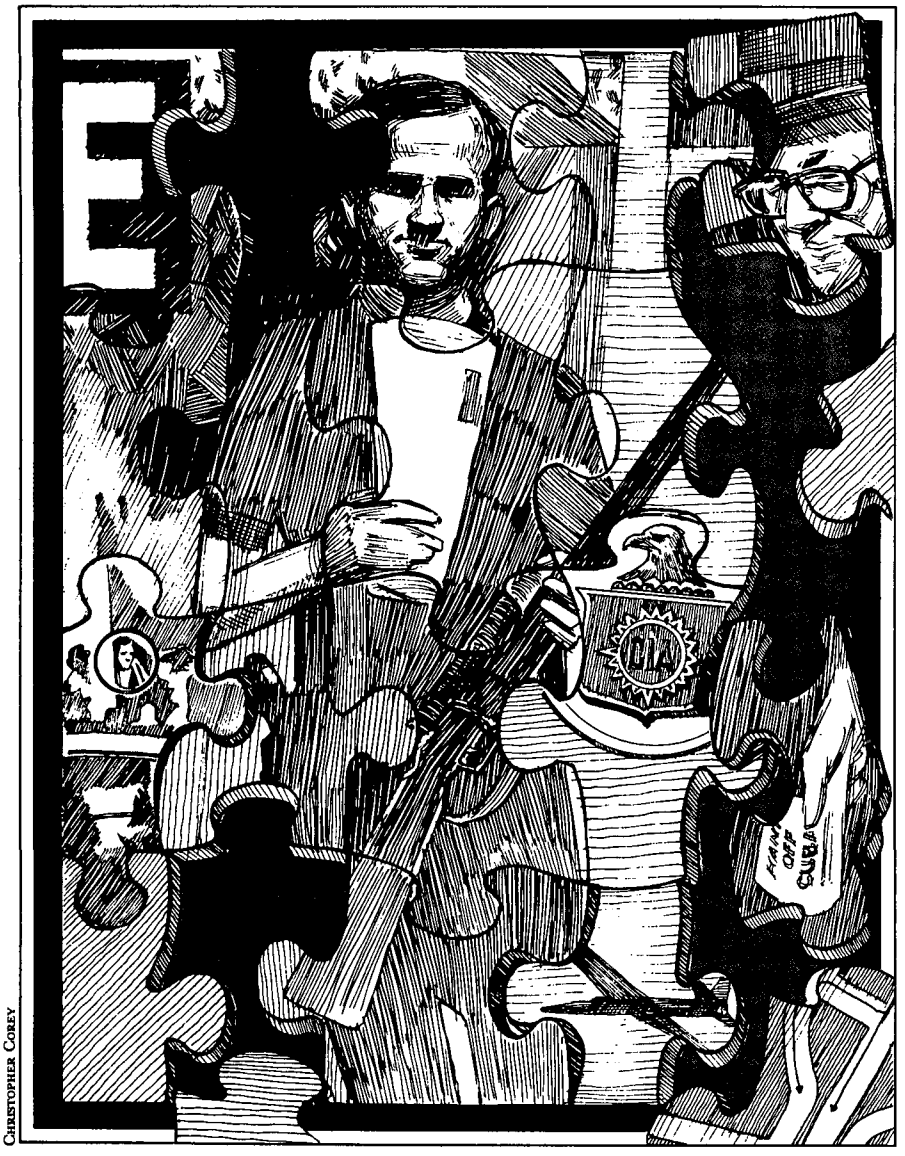

CHRISTOPHER COREY

explain why an undercover KGB agent—especially one on so sensitive a "mission"—would engage in conspicuous leftwing activities, including a radio debate in defense of Castro's Cuba. A major exhibit in Epstein's case is an entry in Oswald's Russian diary. The entry refers to the subsequent promotion of a U.S. embassy officer, and there is no attempt to conceal the fact that it was written *after* that promotion. Epstein presents this entry as an "anachronism" (without quoting or citing it), implying that he has discovered a subtle flaw in Oswald's KGB-prepared "legend." In fact, even the Warren Report noted that the diary was not a contemporaneous record. *Legend*'s ultimate failure as biography, however, is the absence of any rigorous analysis of how Oswald's alleged cover story might relate to the events of November 22, 1963, which gave his name its place in history.

Legend is an allegory: the story of Oswald is a popular mystery, but here his tale is told in order to introduce the reader to a deeper, and less popular belief—that U.S. intelligence has been penetrated at a high level by the KGB. The main source of the story is James Jesus Angleton, once the chief of the CIA's Counterintelligence staff. According to Angleton, the KGB sent a fake defector to the United States to cover up its covert links to Oswald. The ostensible proof of the penetration is that the fake defector—one Yuri Ivanovich Nosenko—is now drawing $30,000 a year as a CIA consultant, while Angleton, who challenged his *bona fides,* is out in the cold—forced to resign in a purge that turned the agency (in Epstein's words) "inside out."

The gospel according to Angleton—and passed on uncritically by Epstein—begins with the appearance of a prophet in the form of a Soviet defector, Anatoli M. Golitsin. Golitsin reveals that there is a "mole" in the CIA—that the agency has been penetrated up to its highest echelons by the KGB. Characteristically, Epstein never considers the possibility that Golitsin might have himself been a disinformation agent, sent by the KGB to feed paranoia to the CIA by persuading the agency that one of its top officers was as red as Kim Philby. In fact, the disruption ultimately produced by the belief in this penetration appears to have been immense.

Six months after Golitsin's defection, another KGB agent—Yuri Nosenko—made his first contact with the CIA. In January 1964, Nosenko also defected to the American side. His story turned attention away from some of Golitsin's leads to the mole. Nosenko named many names, but, according to Angleton, he may only have been "burning" agents who were no longer of any use to the KGB.

The main message from Nosenko, however, was that he had personally supervised the KGB's file on Lee Harvey Oswald when the latter defected to the Soviet Union in 1959, and that Oswald had never worked for Soviet intelligence. According to Nosenko, the KGB had beaten even the FBI to the conclusion that Oswald was a lone nut—an abnormal, unstable personality, unworthy of KGB recruitment. Despite Oswald's declaration at the U.S. Embassy in Moscow that he had agreed to furnish the Soviets with information he had acquired as a radar operator in the Marine Corps (stationed at a major operational base of the U-2 spy plane), Nosenko claimed that the KGB hadn't even bothered to debrief Oswald.

The CIA's Counterintelligence and Soviet divisions both quickly came to doubt Nosenko's story. Equally quickly, the FBI appears to have embraced it. Key aspects of Nosenko's account were corroborated by a favorite FBI source code-named "Fedora," a KGB double agent working under diplomatic cover at the United Nations. In the long run, those who doubted Nosenko had to conclude that Fedora was—and maybe is—a triple agent.

FOR THE MOST PART, Epstein relates Angleton's story uncritically. He does not, for example, consider more plausible hypotheses consistent with the known facts about Oswald's life. Most glaringly, Epstein shows no sign of having seriously investigated the possibility that Oswald's defection to the Soviet Union might have been a U.S. intelligence assignment. Despite Epstein's

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first sentence—"This book is about Lee Harvey Oswald and his relations with the intelligence services of three nations"—the asymmetry of his analysis is striking. When Oswald contacts a Soviet consular official with secret ties to the KGB, it suggests his covert links to the Soviets. But when he contacts a U.S. consular official with secret ties to the CIA, it suggests nothing. The KGB's claim that it did not debrief Oswald when he defected is (understandably) disbelieved, and becomes evidence that Oswald was really under KGB control. The CIA's failure to debrief Oswald when he redefected from Russia is, according to Epstein, merely an "inexplicable lapse."

Lapses by U.S. intelligence in the Oswald and assassination investigations were legion, but Epstein's discussion of J. Edgar Hoover's flaws, crucial to his thesis, seems speculative and distorted. There is no doubt that the FBI did cover up its deficiencies in the handling of Oswald, and that Hoover controlled the assassination investigation like a petty tyrant. But Epstein has made him into a convenient whipping boy, someone more concerned with the FBI's image than Oswald's possible connections to the KGB.

Legend's ultimate failure is the absence of any rigorous analysis of how Oswald's alleged cover story relates to the events of November 22, 1963.

The contrast between Hoover, whose thinking Epstein characterizes as "brutally simple," and Angleton, who is depicted as wise and subtle, is stunning. Although Epstein does not make clear just how much he relies on or agrees with Angleton, his warm sympathy for the counterintelligence curmudgeon is unconcealed. Angleton is portrayed as a man of crafty intelligence and civilized avocations, with the patience natural to one who is a trout fisherman and a Nero Wolfe-like breeder of orchids. (Epstein has even adopted the latter hobby.) The professorial Angleton studied the Nosenko file "through his thick horn-rimmed glasses," we are told; he is a sage who finds truth by the exquisitely painstaking sifting-out of what is false.

It is hard to believe that this is the same James Angleton who now chairs the Security and Intelligence Fund, which raises money to defend ex-government agents prosecuted for black-bag jobs and other crimes in the line of duty. A 1977 fund-raising letter signed by Angleton credited the Communist Party, working through a civil liberties front organization, with achieving nearly all its goals of undermining U.S. counterintelligence capabilities. The House Un-American Activities Committee, he complains, has been destroyed, and only the FBI and CIA remain—with both, according to Angleton, "so badly shattered that they no longer have adequate internal security or counterintelligence capabilities."

In his previous book, *Agency of Fear,* (on the Drug Enforcement Administration), Epstein noted that, "Because the circumstances surrounding each interview bear directly on [its] credibility . . . I have decided to reveal all the sources for this book and comment on the motives, problems, contradictions, and gaps that I found. . . ." Such an approach is conspicuously absent from *Legend,* and Epstein should not be excused for his recurring ambiguity about sources. It is impossible to determine which parts were provided or suggested by private CIA sources. Epstein repeatedly omits specific citations to published material, and erroneously gives the impression that *he* forced the release of many assassination documents. This often careless or devious treatment of material from published sources must call into question the accuracy of Epstein's reports on his many private interviews. There may well be information in his interviews of Oswald's fellow marines which Epstein did not choose to discuss or whose significance he did not discern.

THE IMPORTANCE OF THE disclosures Epstein has gathered from Angleton and other disaffected ex-CIA personnel is that there is now a window where we used to have only an opaque barrier. The book intends to let us look through the window in one direction, to see how Oswald looked from Angleton's side of the glass. But we can also look through the window the other way, to see how Angleton and Company treated the Oswald case, and to begin to understand how they viewed other CIA secrets.

This insight raises many new questions. Most provocatively, if Angleton now believes that Oswald was a KGB agent, what did he think from 1959 to 1962, when his section of the CIA was intercepting Oswald's mail? Epstein reports that Angleton's people obtained a strongly anti-American letter which Oswald wrote to his brother shortly after defecting. Epstein has claimed elsewhere that a letter in which Oswald said he had seen U-2 pilot Gary Powers was also intercepted. In 1962, says Epstein, "another piece of the jigsaw puzzle for James Angleton and his subordinates" was a letter that Marina Oswald apparently received from the daughter of a suspected KGB agent in Leningrad. These facts are new; this mail interception was apparently never disclosed to the FBI or the Warren Commission. In fact, the CIA told a congressional committee in 1976 that the only intercepted Oswald correspondence was an innocuous letter *to* him. Thus, Angleton's staff may have suppressed their preassassination knowledge of Oswald, even from the rest of the CIA.

Epstein's Angleton reveals an important version of a secret struggle inside the CIA. The Nosenko battle is a protracted, perhaps decisive, part of a larger war. That struggle concerns the role of counterintelligence and the wisdom of disclosing agency secrets to Congress and the press. Other issues of policy—ranging from the Middle East to the Sino-Soviet dispute—have also been affected.

Although the 900-page report of the CIA's Soviet division concluded that Nosenko was a disinformation agent, by October 1968, he had been released and rehabilitated. Key Angleton people in the Soviet division were reassigned, and, for Angleton, the Nosenko case was turned "inside out." Only Counterintelligence dissented in the final round-table review, and Angleton even suspected that Nosenko was main-

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taining contact with some Soviet-controlled source, possibly the top-level KGB "mole" in the CIA. In December 1974 an old adversary, William Colby, forced Angleton to resign by leaking to Seymour Hersh details of the illegal mail coverage under Angleton's direction.

Epstein does not mention Angleton's memorable and cryptic retort to Hersh's questions about CIA wrongdoings and domestic activities: "A mansion has many rooms and there were many things going on during the period of the [antiwar] bombings. I'm not privy to who struck John." "Who struck John" is apparently CIA jargon meaning "the details." The origin of the phrase is unknown, but the curious coincidence that the expression literally conveys the continuing mystery of the Kennedy assassination is a neat piece of irony. ❏

A poet with something to tell you

WILLIAM STAFFORD

ONE WAY TO GET THE immediacy of Philip Levine's poetry is to imagine overhearing it, maybe from the other side of a door, so that the strange *onwardness* of the language can snag you without the distraction of knowing it is poetry. Listen to this part of "No One Remembers," from *The Names of the Lost*:

You think because I was a boy, I didn't hear, you think because you had a pocketful of loose change, your feet on the desk, your own phone, a yellow car on credit, I didn't see you open your hands like a prayer and die into them the way a child dies into a razor, black hair, into a tire iron, a chain. You think I didn't smell the sweat that rose from your bed, didn't know you on the stairs in the dark, grunting into a frightened girl. Because you could push me aside like a kitchen chair and hit where you wanted, you think I was a wren, a mourning dove surrendering the nest.

WILLIAM STAFFORD teaches at Lewis and Clark College. Among his books of poetry are Allegiances *and* Traveling through the Dark.

Philip Levine's messages to the world can be lined out this way, as prose, to demonstrate how easily this current poetry has pulled up alongside us and begun to deliver its immediately available communication—direct, uncluttered, nonesoteric. This kind of poetry—and Philip Levine is demonstrating it at its best year after year—doesn't require any background of culture from T. S. Eliot's "tradition," or even from the assumed centrality of the American Standard Background, as in Lowell's early work.

Levine's work quietly appropriates the direct language of prose while maintaining a readiness to gain from the frequent bonuses that lurk in syllables and cadences in the lingo of talk. There is an immediate, coercive drop onto common experience, the opposite of scholarly allusion. But there is a kind of unfolding and controlled tenacity about the sentences as they go down the page. Here is the end of the poem quoted above, this time by the lines as Philip Levine formed them:

The earth is asleep, Joe,
it's rock, steel, ice,
the earth doesn't care
or forgive. No one remembers
your eyes before they tired,
the way you fought weeping.
No one remembers how much
it cost to drive all night
to Chicago, how much
to sleep all night in a car,
to have it all except
the money. No one remembers
your hand, opened, warm
and sweating on the back
of my neck when you first
picked me up and said
my name, Philip, *and held*
the winter sun up
for me to see outside
the French windows of
the old house on Pingree,
no one remembers.

One shouldn't claim too much for these unspectacular lines, or try to force admiration for an art that depends, after all, on little, sustained satisfactions. But when the quietness and consistency of a book like *The Names of the Lost* can recur to you as you rove through other books, you begin to know that a voice has established itself in your life. And you go back, wondering why it is when "No one remembers" that you remember. You find again a certain bittersweet flavor.

THAT FLAVOR COMES, IT seems to me, from a distinctive inward complexity in our time. For Levine, and for many, many others today, the world is an unfeeling place. People brush on by, and forget. And we are surrounded by violence and foreshadowings. How can people be this way? And yet, it is only by our feelings that we identify "unfeeling." If the feelings didn't exist, there would be no reaction, no realization. In such a world, justice is a continent always being discovered by taking soundings. That continent comes into being as we read writers like Philip Levine. The tradition behind these individual talents is just the widely available tradition of being alive, of having relatives, of experiencing cold, hunger, fulfillment, loss, redemption. The places and people in these poems are there—inevitably—for all of us. They are the elements of our lives made clear, enhanced by art, and returned to us. In light of such poems we see better where we are now.

Levine is one of the many in this current tradition-of-being-alive. Many poets now do it his way—coming at experience with language validated by everyone's feelings about talk.

And sometimes his poems seem strange. I can't account for why they work: there are elements in each one not yet encompassed in critical theory. For example, in a poem called "Waiting," the reader finds a constant stretching toward particulars that are so incidental that they need not be explained, but so meaningful to the speaker that he must mention them:

You sit
at the window above the windswept yard
treeless forever, and you pray
for us all, for the lying witness
left in a ditch, for the stolen car. . . .

Any example may be forced under some critical formulation, but the effect of reading Levine is that of finding ourselves surprised by a move that carried us beyond what we knew, or where we have been, or where we expected to go.

Philip Levine is exploring, taking soundings. In such writing, even though people and places are nearby and the language is the language of talk, there can be many surprises. And when he does range into world events, his lines catch up occasional accelerations, recurrences at odd places, glimpses that allow ordinary phrases to go telescopic. A good example is found

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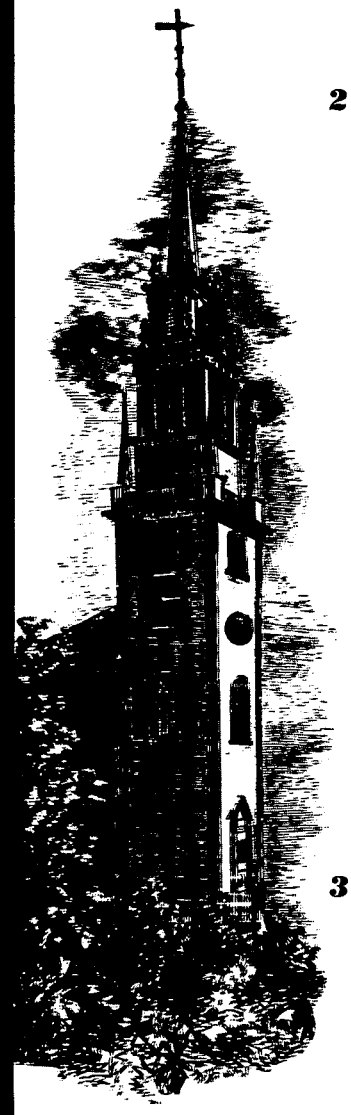
in "For the Poets of Chile" (also from *The Names of the Lost*). He remarks that ". . . someone must/ stand at the window . . . / remembering how once/ there were voices. . . ." And speaking of "Victor, who died/ on the third day," he ends with the living:

Victor left a child,
a little girl
who must waken each day
before her mother
beside her, and dress
herself in the clothes
laid out the night
before. The house sleeps
except for her, the floors
and cupboards cry out
like dreamers. She goes
to the table and sets out
two forks, two spoons, two knives,
white linen napkins gone
gray at the edges,
the bare plates,
and the tall glasses
for the milk they must
drink each morning.

It was Ezra Pound, I believe, who said that poetry should be as well written as prose. To test whether Levine has something to tell you, regardless of how it is placed on the page, here is "On the Murder of Lieutenant José Del Castillo by the Falangist Bravo Martinez, July 12, 1936," printed as a news account:

When the Lieutenant of the Guardia de Asalto heard the automatic go off, he turned and took the second shot just above the sternum, the third tore away the right shoulder of his uniform, the fourth perforated his cheek. As he slid out of his comrade's hold toward the gray cement of the Ramblas he lost count and knew only that he would not die and that the blue sky smudged with clouds was not heaven for heaven was nowhere and in his eyes slowly filling with their own light. The pigeons that spotted the cold floor of Barcelona rose as he sank below the waves of silence crashing on the far shores of his legs, growing faint and watery. His hands opened a last time to receive the benedictions of automobile exhaust and rain and the rain of soot. His mouth, that would never again say "I am afraid," closed on nothing. The old grandfather hawking daisies at his stand pressed a handkerchief against his lips and turned his eyes away before they held the eyes of a gunman. The shepherd dogs on sale howled in their cages and turned in circles. There is more to be said, but by someone who has suffered and died for his sister the earth and his brothers the beasts and the trees. The Lieutenant can hear it, the prayer that comes on the voices of water, today or yesterday, from Chicago or Valladolid, and hangs like smoke above this street he won't walk as a man ever again.



Each Time is Different

1 The first death was difficult.
I sat alone in the corner of
my third grade classroom.
The others were gone, the teacher
would be back, she'd said, and I
must wait for her. I could hear
a bell tolling from St. Joseph's.
Their children would be going
soon, and maybe I would move
among them quietly, hoping to go
unnoticed. Down the long hall
I saw the old janitor lean
his wet mop against the wall;
a match flared in his face,
and then the whole world darkened.

2 I stopped the car and left the motor
running, and the other two
asleep under a blanket in
the back seat. I pissed against
the gray, scarred trunk of a roadside
oak whose bare branches bowed
under the weight of last night's
new snow. Now it was dawn,
yellow and thin, crackling
the windshield. Off in the distance
I heard the sudden angry bite
of something like a rifle,
and then I saw him—one man
in a suit of long white underwear—
pushing the inner fire out
in sudden bursts, and the axe
rising and falling into
the long hull of a stricken tree.
His muttering too far to hear,
the charred fragments flying,
and all around him
the ground cluttered and stained.

3 There had been a storm, low
gray clouds coming in, and the sea
the color of wasted iron riding
up the shore to break over
the fishing boats. I walked
a while smelling nothing and tasting

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the salt that crusted on lips
and eyes. Where was I going so early?
The wise world slept that day,
and one man searched the long
flat beach that stretched as far
as I could see, empty and steaming.
Out at sea, not even the gulls
to greet each blackened wave
that broke in sudden shouts
of foam. I began to sing, quietly
at first, but that seemed far
too pointless, and so I shouted
for all I was worth, still unheard.

4 A huge station, almost empty,
and a voice in a language no one
understood announcing cities
long gone to dust or cities that
never were, Babylon, Nineveh,
Flat Rock, What Cheer. There were
five of us, a woman in a blue coat
glistening with rain and four men
all at a great distance, and above
a clock that had stopped. A man
opened his paper and sighed, somewhere
there was a world, alive and rioting,
somewhere life as we had never known it
went on and on, but we were here
out of time and space, waiting
because that was all we had
been brought here for, probably all
we were good for, and we were good.

5 Some day soon, I'll go back
and stand under the dark tower
of that blackened church I passed
as a young man. What held it
up, I wondered every evening,
and I could almost feel the great
blocks of damaged granite
sliding towards me as the sky pressed
down on it from all sides.
I could hear the first sighs
and groans, as one hears a train
—miles off—in the tracks, stands
and moves back to give it passage.
I will look up and hear nothing
or feel a certain kinship with
a place so old, the cross still
carving a blackened sky, not
as a symbol of power or belief
but as a mark beneath which
something we made once lived and died.

Starlight

My father stands in the warm evening
on the porch of my first house.
I am four years old and growing tired.
I see his head among the stars,
the glow of his cigarette, redder
than the summer moon riding
low over the old neighborhood. We
are alone, and he asks me if I am happy.
"Are you happy?" I cannot answer.
I do not really understand the word,
and the voice, my father's voice, is not
his voice, but somehow thick and choked,
a voice I have not heard before, but
heard often since. He bends and passes
a thumb beneath each of my eyes.
The cigarette is gone, but I can smell
the tiredness that hangs on his breath.
He has found nothing, and he smiles
and holds my head with both his hands.
Then he lifts me to his shoulder,
and now I too am there among the stars,
as tall as he. Are you happy? I say.
He nods in answer, Yes! oh yes! oh yes!
And in that new voice he says nothing,
holding my head tight against his head,
his eyes closed up against the starlight,
as though those tiny blinking eyes
of light might find a tall, gaunt child
holding his child against the promises
of autumn, until the boy slept
never to waken in that world again.

PHILIP LEVINE

PHILIP LEVINE's most recent books of poetry are The Names of the Lost *and* 1933. *He lives in Fresno, California, where he is a professor at the California State University.*

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F.I.S.T., directed by Norman Jewison.

THE GREEK TYCOON, directed by J. Lee Thompson.

No fringe benefits

STEPHEN HARVEY

THE RISE OF THE AMERICAN labor movement has never been one of Hollywood's most treasured themes—partially, I suspect, because when it actually took place, the studios were having too many union troubles of their own to snuggle up to organized labor, even on screen. The passing decades have rendered this theme fairly innocuous by now, so it was perhaps inevitable that at this stage someone like Norman Jewison should come along with a movie that purported to tell the whole story in microcosm.

The result does to this saga approximately what Jewison wrought upon the civil rights movement via *In the Heat of the Night* a decade ago. Everything about *F.I.S.T.* trumpets expense and importance, from its nearly two-and-a-half-hour running time and panoramic scenario to its high-gloss photography, prestigious cast, and crescendo-ridden score. It's a triumph of production values, and yet precisely the sort of spurious epic the film industry proudly turns out from time to time as proof that it can too deal with Weighty Issues when it wants to. Jewison's overstuffed earnestness robs *F.I.S.T.* of all the vigor this subject cries out for, while his thesis boils down to the usual clichés about bigness and badness being as synonymous in labor organizations as they are in business.

The title is an acronym for the Federation of Interstate Truckers, and any resemblance to the Teamsters is purely intentional. The film's first half takes place in Cleveland during the late thirties (actually represented by the more picturesquely archaic sections of Dubuque, Iowa). A hulking Hungarian day laborer named Johnny Kovak (Sylvester Stallone) is prompted by a deep-seated sense of injustice and his own unemployment to join *F.I.S.T.* as an organizer. Internal union dissension and the bosses' brutality and intransigence only fortify Kovak's determination to win power for the men he represents and, coincidentally, for himself.

Inevitably, power corrupts, of course; ere long Kovak becomes entangled with the underworld, both Irish (Kevin Conway) and Italian (Tony Lo Bianco), his heedless opportunism alienating his most steadfast pal (David Huffman), who has managed through it all to hold on to his ideals of solidarity. Quick cut to the Senate investigations of organized labor in the late fifties, and Kovak's all-too-timely downfall.

Unfortunately, *F.I.S.T.* is every bit as schematic as I've made it sound. Joe Eszterhas's script (with some finishing touches by Stallone) is a rough-hewn outline at best, but it might have been serviceable enough in different directorial hands. Like his predecessor in message-mongering, Stanley Kramer, Jewison, however, once more has taken on the duty of spoon-feeding insight to those backward pupils, the audience. There's not a spontaneous jolt anywhere in the movie—looming shadows and ominous chords on the soundtrack precede every outbreak of mayhem; our reaction to Kovak's call to arms must immediately be cued by a close-up of some blue-collar extra clamoring for his membership card.

BRUCE MCGILVRAY

STEPHEN HARVEY, INQUIRY's film reviewer, is coordinator of the film study program, Museum of Modern Art, New York City.

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JEWISON'S TOUCH IS MOST belabored whenever he aims for off-handed charm—the development of Kovak's gauche courtship of Anna (Melinda Dillon) strains so hard for cuteness that only the effort is visible. Even the movie's stately visual beauty is misplaced; as with *Julia*, all that soft-focus period clutter gets in the way of the visceral clout the material calls for. *F.I.S.T.*'s first hour climaxes with a blood-soaked brawl between Kovak's striking truckers and an opposing army of strikebreakers, but the fight's impact is negligible. The eye is so distracted by Laszlo Kovak's subdued palette of shifting ochres and ambers that it's nearly impossible to pay attention to what the scene is really about. Throughout the sequences devoted to Kovak's rise, *F.I.S.T.* manages to combine stereotyped roles out of Depression-era melodrama (Cassie Yates's smart-mouthed waitress out of Ann Sheridan, Stallone playing Cagney to Huffman's rueful, conscience-ridden Pat O'Brien) with the stylistic banalities of *Bound for Glory* and of practically every other recent movie about the thirties.

F.I.S.T.'s second half is introduced with a snippet of "Rockin' Robin" blaring over the soundtrack; naturally, the song has absolutely no relation to the mood or place being depicted, but the fact that it comes from the fifties is presumed to suffice. The scenes of Stallone and his union cronies backed up against the wall by crusading senator Rod Steiger are competently handled, but Jewison's treatment is perfunctory at best, particularly when compared to like scenes in Francis Ford Coppola's *The Godfather Part II*.

Moreover, by this stage, it's clear that Stallone's hubris far exceeds that ascribed to the character he's impersonating. The rank-and-file's adulation of Kovak is largely attributed to his immense personal magnetism; Stallone's flaccid performance seems to be based on the assumption that his own natural charisma, without any special thought or effort, would suffice to explain such hero worship. But throughout the movie his face remains an inert mask, those bulbous brown eyes registering nothing, the mouth repeatedly collapsing into a sneer while delivering lines in an uninflected baritonal bleat. As the middle-aged Kovak, Stallone varies the performance by adding an ounce of phlegm to his voice and a becoming dab of gray at the temples, reminiscent of Rock Hudson in the final reels of *Giant*. It's the kind of routine usually tossed off by "legendary" performers of long standing who know their fans will love them merely for existing. Despite the *Rocky* phenomenon, all this is a mite premature on Stallone's part. If *F.I.S.T.* is a hint of things to come, Stallone may have the shortest-lived major star career since Luise Rainer. In the meantime, *F.I.S.T.* neither fulfills his aims, nor the more grandiose ambitions of its director.

"The Greek Tycoon" makes the romans à clef of Jackie Susann and Harold Robbins seem like double crostics in comparison.

Coming right on the heels of *F.I.S.T.*, *The Greek Tycoon* would have one believe that capitalists have their foibles, too—*folie de grandeur*, it seems, is the great leveler. Yet while *F.I.S.T.* is at least an honorable failure, every frame of *The Greek Tycoon* reeks of dispirited exploitation. Incredibly enough, it took three writers (who deserve to remain nameless) to concoct a story about Greece's greatest shipping potentate, one Theo Tomasis (Anthony Quinn) enamored of an American blue blood named Lizzie Cassidy (Jacqueline Bisset)—slim, brunette, and addicted to huge black sunglasses. She, however, is married to James Cassidy (James Franciscus), the handsome senator and, later, President. Upon Cassidy's assassination, Tomasis asks for her hand, and although she's slightly squeamish at the prospect (that peasant upbringing of his, you know), she accedes. Of course her brother-in-law, the attorney general turned presidential candidate, is appalled but—why go on? It makes the *romans à clef* of Jackie Susann and Harold Robbins seem like double crostics in comparison. At least they had the wit to spice things up with a touch of smarmy speculation, but *The Greek Tycoon* is just a live-action compilation of back numbers from the *National Enquirer*. In fact, the movie sticks so doggedly to the fan-magazine facts that almost the only way to stay awake while it unreels is to guess why any details were changed at all. Is "Cassidy" gunned down during a stroll on the beach to spare us the gruesome memories of Dallas? Was Christina Onassis eliminated from the story because she's the only one likely to slap a lawsuit on its perpetrators? And—the really burning question—would Bisset still have been cast if her first name hadn't been Jackie?

DEPENDING ON YOUR TOLerance for tastelessness and kitsch, movies like this can be diverting in direct ratio to their *outré* lunacy. *The Greek Tycoon* does have a delirious moment or two, but, for the most part, with its windy board meetings and piteous homilies about the loneliness-of-it-all at the top, it's too solemn to be much fun. For poignancy's sake, Anthony Quinn again gets to vibrate to that old bouzouki while reviving those intimations of mortality at the fadeout—Theo/Ari turns out to be a kind of Zorba the Greek in Guccis. The performers are all too zombie-like for true camp—Bisset gets to swim a lot and show off her upper-class consonants (never mind that they smack more of Mayfair than Miss Porter's), while, in the role of Tomasis's ill-fated son, Edward Albert gives the impression that on the whole, he'd rather be in Catalina. J. Lee Thompson has directed the whole sleepy business with unerring ineptitude—considering that about a third of the film's running time is taken up with air-borne establishing shots of the Greek isles, New York, Washington, and a mock Hyannisport, this may well be the first film to successfully induce jet lag in its audiences. Since the motive behind *The Greek Tycoon* is so thoroughly and obviously venal, the most appropriate thing one could wish for it would be to lose millions of drachmas at the box office. ❏

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A white jazz original

NAT HENTOFF

QUIET AS THE FACT IS KEPT, many white jazz players, even those with international éclat, feel somewhat defensive about being that color in that line of work.

Jim Hall, for instance, the most softly creative guitarist in all of contemporary jazz, considered it necessary to explain his white presence in a conversation with *New Yorker* critic Whitney Balliett:

"I've always felt that the music started out as black but that it's as much mine now as anyone else's. I haven't stolen the music from anybody—I just bring something different to it."

But most of the younger black players don't even call what they do jazz. The word has been "stolen," some of them say. So they call what they play "black music," or they give it no name since everyone can see where it comes from when *they* play it.

History is on the black side of the argument. Oh, there have been appealing, intriguing, and distinctive white improvisers—Jack Teagarden, Bix Beiderbecke, Irving Fazola, Bill Evans, among many more. But every single seminal force in the music has been black: Louis Armstrong, Duke Ellington, Lester Young, Charlie Parker, Miles Davis, John Coltrane, Ornette Coleman. That is, whenever the language has been fundamentally expanded, leading to yet another "school" of acolytes, the master's hand has been black.

It could change. Pianist-composer John Lewis says that by now, with jazz so much a part of the growing-up years of the international young, the next grand creator could be Rumanian or Colombian or (to confound the State Department) Russian. Maybe so. But it hasn't happened yet.

There was, however, one jazzman who, while influenced by black sounds, did become the most compellingly original white player in the history of the music. While he was alive, his work was known mainly to a rather narrow sector of the jazz audience—those who dug Dixieland, Chicago-style, and the brashly amiable Eddie Condon approach to collective music-making. Though trapped economically in that milieu for most of his playing life, Charles Ellsworth "Pee Wee" Russell was a veritable unicorn among the fauna of that gin-soaked night life. And while he adapted to the ensemble passages—cutting through the mightiest pillars of hot brass with his pungent, spiraling sound, Pee Wee's solos were so *sui generis* that he could not be crammed into any category. Or race or style.

One of Pee Wee's admirers, Coleman Hawkins, told me at a record date on which they were joined in the early 1960s: "Oh, he's been playing those 'strange' notes ever since the twenties. 'Course they're not strange at all if you know how to hear inside the music."

PEE WEE, TALL, CROOKED-thin, had the look of being so fragile that a bray from a hard-drinking customer might topple him off the stand. Part of that brittle unsteadiness had to do, for many years, with his fabled taste for bottled spirits. But even when more or less sober, Pee Wee was somewhat of a wraith. Almost invincibly shy, he communicated in a chronic mumble, punctuated by a variety of voiceless, self-deprecating grimaces, with twists of the head and shoulders. Yet, those with the perseverance to penetrate those defenses found a man of much unfeigned charm, wit, and innocent outrage at the balance of power in jazz and everywhere else.

There was a most passionate devotion to jazz, of course, and a lucid understanding of what made this music worth a lifetime. I do not know a more empirical definition of jazz, for instance, than Pee Wee's:

"You could use ten-syllable words to define it, and it wouldn't mean a thing. But in a way, it comes down to this: a certain group of guys—I don't care

EVA MIGLIOLI

NAT HENTOFF has written widely on jazz. His most recent book on the subject is Jazz Is.

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where they come from—that have a heart feeling and a rhythm in their systems that you couldn't budge, a rhythm you couldn't take away from them even if they were in a symphony organization. They could feel the beat better than someone who has memorized the book. These are men whose way of playing you couldn't alter, no matter where you put them or what you tried to teach them."

Pee Wee was the paradigm of that definition. He could do just about everything with time but make it stop. And deeply felt, throughout his intricately convoluted solos, was one of the strongest pulses in jazz. Pee Wee's tone, moreover, was unlike that of any clarinetist before or after him. Much of the time, his sound was astringent, as if it had taken a long time to find its way out of that long, contorted body and was rather exasperated at the rigors of the journey. But somehow, harsh as his tone first appeared to be, it took on extraordinarily subtle nuances as he devised ingenious melodic structures which were so unpredictable that if he played the same tune twice in a row, the second solo would be strikingly different from the first. And sometimes, especially in certain blues, Pee Wee's sound turned soft, full, woodsy, and so intimate that listening was like eavesdropping.

Pee Wee grew up in Muskogee, Oklahoma (he was part Cherokee, a lineage of which he was manifestly proud). A professional musician by the time he was 16, Pee Wee added to his seasoning by working the Southwest, then Chicago (including gigs with Bix Beiderbecke), and finally, for decades, in New York. Although typecast as a Dixieland–Chicago-style jammer, Pee Wee managed to break out of those strictures toward the end of his life, playing pieces by such formidable modernists as John Coltrane and Thelonious Monk and making them sound wholly unlike any way they had ever sounded before. Some of his older white fans were rather aghast at Pee Wee's having forsaken such musical verities of *their* youth as "I've Found A New Baby" and "When the Saints Go Marching In" for anthems of the newest jazz generation. And some young black listeners wondered at this grizzled white apparition who had such confident affinity with the black-rooted mysteries of Coltrane and Monk. Actually, Pee Wee's ear had no limits. Being himself, he was always modern.

Pee Wee died in January 1969. He was 62. All too few of his albums are still available, but recently, two pleasurably instructive sets have been released. *Eddie Condon in Japan* (Chiaroscuro/Audiofidelity) is a record of a 1964 trip by, among others, Condon, Pee Wee, trombonist Vic Dickenson, and tenor saxophonist Bud Freeman. Also present was Jimmy Rushing, who, like Billie Holiday, turned the most familiar songs into tartly poignant intimations of autobiography. Included in the set is "Pee Wee's Blues," in which Russell transforms the common language of jazz into a distillation of a lifetime of continually redefining himself in sound.

ON TWO DISCS, THE INDIVIDualism of Pee Wee Russell (Savoy) is an account of a Sunday afternoon session at Boston's Storyville in 1952. Among his colleagues was trumpeter Ruby Braff, then 25. Braff, then as now, was as unconcerned with trendiness as Pee Wee was. Starting with an abiding affection for Louis Armstrong, Braff developed a warmly lyrical, conversational style that combined jaunty self-assurance with the tenderest concern for each lineament of a melody. Braff's tone, then as now, was firm, vibrant, and celebratory. And he too could be fitted into no ready stylistic category, being concerned with pleasing himself rather than critics.

As is evident in this session, Pee Wee and the younger hornman much enjoyed improvising together; and indeed for many years, they were close friends off the stand. While Braff tended to have small patience with anyone's eccentricities but his own, he considered Pee Wee so unique a phenomenon of nature and music that, for all I know, he may have identified Pee Wee with the very Spirit of jazz. And if he did, he was right.

One of the first times I ever heard Pee Wee in a club was in the late 1940s in Boston. I was studying classical clarinet at the time and could read anything but could improvise nothing. Another student, who could write down whatever he heard—which was everything—went up to Pee Wee one night and handed him a sheaf of music manuscript pages. Pee Wee unfolded them and saw dense thickets of notes. It could have been the score of a grandiosely ambitious, experimental classical work.

"Here," the student said to Pee Wee. "I made this transcription of one of your solos last night. I'd like you to have it."

Pee Wee looked at the sheets with grave suspicion. He held them away from him, brought them closer, turned them sideways, shaking his head all the time. "This can't be me," he said. "I can't play this."

The student swore that each note in the fiendishly brilliant structure had indeed been played by Pee Wee.

"Well," mumbled Pee Wee, "even if that's so, I wouldn't play it again the same way—even if I could, which I can't." ❏

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LETTERS

Letters to the editor should be addressed to INQUIRY Magazine, 1700 Montgomery Street, San Francisco, California 94111. The editors reserve the right to edit letters for length when necessary.

Criminal intent

I HAVE ALWAYS HAD GREAT respect for the opinions of Thomas Szasz, but I fault both the logic and value judgments he makes in "The psychiatrist as accomplice," [*INQUIRY*, Apr. 3, 1978].

For the most part, crimes in this country by definition require both knowledge and intent of the actor. All of us have done many things which, if done with a different intent or more complete knowledge, would constitute criminal acts. However, rather than impose strict penal liability on ourselves, we have elected a more generous view of man's nature. Thus, when you overdraw your checking account, you are commonly allowed a specified period of time to make the check good before the law presumes an intent to defraud. We do not assume that every automobile accident was an intentional assault.

Likewise, where we find a person is incapable of possessing the requisite knowledge or forming the requisite intent, by definition no crime was ever committed. A three-year-old child may set a fire while playing with matches, but we do not label this arson. Equally, a mentally deficient person may shoot another, but it still is not murder unless he knew and intended the consequences of his act.

Dr. Szasz would not only impose strict liability against the actor, he would also prosecute the psychiatrist who testifies that the actor was mentally incompetent to possess the knowledge or form the intention necessary to establish the criminal act. I wonder if he would also prosecute anyone with the temerity to suggest that the three-year-old child is not an arsonist.

The good doctor's problem is not with psychiatrists in the courtroom, it is a more fundamental objection to the basic premise of criminal responsibility defined by the law. Dr. Szasz accuses psychiatrists who testify for the defense in criminal cases of "stubborn and willful destruction of law and justice." In truth it is he who wishes to destroy the law because he disagrees with it. He justifies this by comparing our law with Russia's. Soviet psychiatrists, he tells us, are also merely acting pursuant to their law.

Perhaps I simply view individual rights too highly, but I cannot understand how Dr. Szasz finds certifying an individual as incompetent to protect him from the state the logical equivalent of certifying him incompetent to sacrifice him to the state.

ROBERT M. JONES
Dallas, Tex.

THOMAS SZASZ replies: Mr. Jones is right in noting that a crime is not simply an action with damaging consequences. But that is all he is right about.

I reject Mr. Jones's facile categorization of "mentally incompetent actors" as agents so similar to irresponsible children that the criminal law ought to treat them as irresponsible children. In fact, the civil law treats such persons as responsible adults, insanity being no excuse in tort law. It is destructive neither of the law nor of individual rights to hold such persons responsible for their criminal offenses, as well. Quite the contrary. I submit that Mr. Jones insists that certain criminals are *like children not because they are, in fact, like children, but because he wants to treat them* as if *they were like children.*

Mr. Jones believes that "mental incompetence" is an excusing condition similar to accident. Nothing could be more erroneous. A person may have an automobile accident and also engage in premeditated vehicular homicide. In fact, one could easily imagine a professional hit man who had just run down his victim with an automobile having an accident on his way home from the scene of the crime.

In contrast, "mental illness" is ostensibly a psychiatric condition inherent (for some time at least) in the actor's mind or personality. It would be plainly facetious to contend that an actor was not guilty by reason of insanity of a crime he committed at noon, but was no longer insane at half past noon and was hence guilty of a crime committed at that time. Thus, by this logic, a person judged "mentally ill" or "insane" could commit no crime. In short, I believe that mens rea *should be interpreted common-sensically, not psychiatrically. This follows from the central proposition underlying much of my writing on psychiatry and law, which Mr. Jones ignores: namely, that what we call "mental illness" (especially in courts of law) is not a demonstrable medical condition but a dispositional strategy.*

In my April 3 essay, I tried to demonstrate the legal and logical symmetry between "mental illness" as an incriminating condition, justifying civil commitment, and as an exculpating condition, justifying acquittal as not guilty by reason of insanity. Mr. Jones is opposed to my critique of the insanity defense and verdict; he is silent about my critique of civil commitment. However, his view that "mental patients" are like irresponsible children supports both *the inculpatory and exculpatory uses of the insanity strategy and is therefore inconsistent with his self-proclaimed concern for individual rights.*

Mr. Jones's last sentence suggests that he believes that when we Americans "certify an individual as incompetent" (even if he does not want to be so certified!), we "protect him from the state"; whereas if the Russians do so, they "sacrifice him to the state." Much as I love my adopted country, I can only marvel at such blind chauvinism.

Anarchy and the state

MARIO LUCENTINI'S ARTICLE, "Italy: the politics of parasitism" [*INQUIRY*, Mar. 20, 1978] contained some statements which should be corrected.

If Italian youth cannot find jobs because of the Italian government's economic policies, and if people take to the streets demanding a change and a remedy for this injustice, I fail to see how this can be called a "state of anarchy." Ordinarily, the "cure" for anarchy is for the state to pass more laws. It is a curious type of "anarchy" that requires, as a solution, the repeal of laws and the dismantling of the state. From Mr. Lucentini's writing, it is clear that he also realizes that Italy's problems are caused by the state, so his choice of terms is doubly curious.

It is very difficult to convince people that anarchy is not a synonym for chaos, and that chaos is more often caused directly by the state itself. *INQUIRY* should not help to perpetuate this misconception.

MICHAEL FIESCHKO
North Arlington, N.J.

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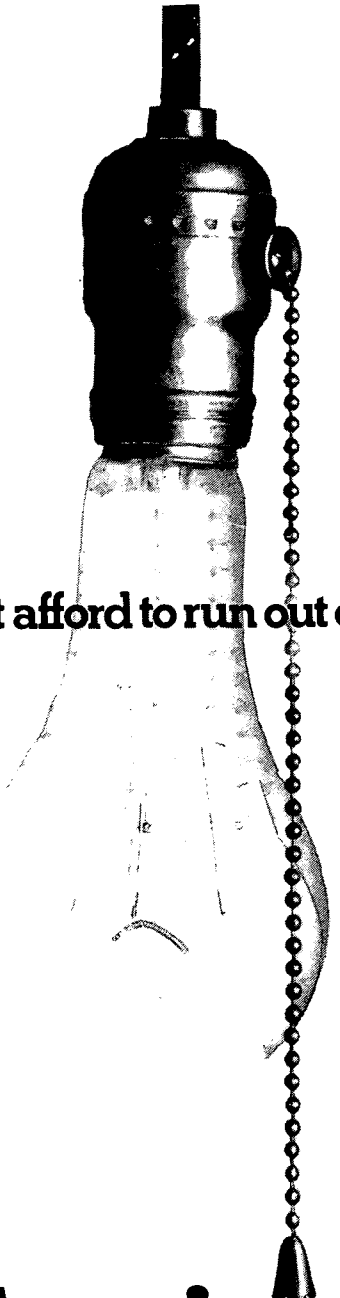

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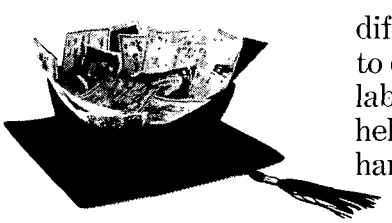

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